OFFICIAL CODE
OF
GEORGIA
ANNOTATED



VOLUME 27

Title 35. Law Enforcement Officers and Agencies

Title 36. Local Government

2012 Edition

KFG30 1981 .A24
Georgia
Official code of Georgia
annotated
2012 v. 27
c.4

MERCER UNIVERSITY

JUL 30 2012

FURMAN SMITH
LAW LIBRARY

Digitized by the Internet Archive
in 2019 with funding from
Public.Resource.Org

https://archive.org/details/officialcodeofge27stat

OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®

Published Under Authority of the State of Georgia

Volume 27

2012 Edition

Title 35. Law Enforcement Officers and Agencies

Title 36. Local Government

Including Acts of the 2012 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

LexisNexis®

Charlottesville, Virginia

2012

MERCER UNIVERSITY

JUL 30 2012

FURMAN SMITH
LAW LIBRARY

Georgia
KFG30
1981
.A24
2012
v.27
c.4

Copyright 1926 through 1930
© 1982, 1987, 1993, 2000, 2006, 2012

by
The State of Georgia

All rights reserved.

ISBN 978-0-7698-4590-6
4192013

(Pub.41805)

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brian P. Kemp, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as same appear of file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 26th day of June, in the year of our Lord Two Thousand and Twelve and of the Independence of the United States of America the Two Hundred and Thirty-Sixth.

Brian P. Kemp, Secretary of State

Preface

This volume cumulates and replaces the 2006 edition of Volume 27 of the Official Code of Georgia Annotated, as supplemented by the 2011 Cumulative Supplement. The 2006 edition of Volume 27 and its 2011 Supplement may thus be recycled or, if so desired, may be retained for historical purposes.

This volume contains all laws specifically codified in Titles 35 and 36 by the General Assembly through the 2012 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice Forms; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2010, 2011, and 2012 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2010 Session of the General Assembly, the user should consult the Georgia Laws.

Visit our website at http://www.lexisnexis.com for an online bookstore, technical support, customer service, and other company information.

If you have questions or suggestions concerning the Official Code of Georgia Annotated, please call toll free 1-800-833-9844, fax at 1-518-487-3584, or email us at customer.support@lexisnexis.com. Direct written inquiries to:

LexisNexis®
Attn: Official Code of Georgia Annotated
701 East Water Street
Charlottesville, Virginia 22902-5389

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

Table of Titles

Title 1. General Provisions.
2. Agriculture.
3. Alcoholic Beverages.
4. Animals.
5. Appeal and Error.
6. Aviation.
7. Banking and Finance.
8. Buildings and Housing.
9. Civil Practice.
10. Commerce and Trade.
11. Commercial Code.
12. Conservation and Natural Resources.
13. Contracts.
14. Corporations, Partnerships, and Associations.
15. Courts.
16. Crimes and Offenses.
17. Criminal Procedure.
18. Debtor and Creditor.
19. Domestic Relations.
20. Education.
21. Elections.
22. Eminent Domain.
23. Equity.
24. Evidence.
25. Fire Protection and Safety.
26. Food, Drugs, and Cosmetics.
27. Game and Fish.
28. General Assembly.
29. Guardian and Ward.

30. Handicapped Persons.
31. Health.
32. Highways, Bridges, and Ferries.
33. Insurance.
34. Labor and Industrial Relations.
35. Law Enforcement Officers and Agencies.
36. Local Government.
37. Mental Health.
38. Military, Emergency Management, and Veterans Affairs.
39. Minors.
40. Motor Vehicles and Traffic.
41. Nuisances.
42. Penal Institutions.
43. Professions and Businesses.
44. Property.
45. Public Officers and Employees.
46. Public Utilities and Public Transportation.
47. Retirement and Pensions.
48. Revenue and Taxation.
49. Social Services.
50. State Government.
51. Torts.
52. Waters of the State, Ports, and Watercraft.
53. Wills, Trusts, and Administration of Estates.

In Addition, This Publication Includes

Constitution of the United States
Constitution of the State of Georgia
Tables of Comparative Sections
Table of Acts
Index to Local and Special Laws

TABLE OF TITLES

Index to General Laws of Local Application

Short Title Index

General Index

Table of Contents

VOLUME 27

Title 35

Law Enforcement Officers and Agencies

CHAPTER		PAGE
1.	General Provisions, 35-1-1 through 35-1-17	3
2.	Department of Public Safety, 35-2-1 through 35-2-140	16
3.	Georgia Bureau of Investigation, 35-3-1 through 35-3-191	66
4.	Georgia Police Academy, 35-4-1 through 35-4-9	167
5.	Georgia Public Safety Training Center, 35-5-1 through 35-5-7	171
6.	State Victim Services Commission, 35-6-1 through 35-6-4	176
6A.	Criminal Justice Coordinating Council, 35-6A-1 through 35-6A-10	180
7.	Organized Crime Prevention Council, 35-7-1 through 35-7-5. [Repealed]	188
8.	Employment and Training of Peace Officers, 35-8-1 through 35-8-26	189
9.	Special Policemen, 35-9-1 through 35-9-15	233
10.	Municipal and County Police Departments' Nomenclature, 35-10-1 through 35-10-11	241

Title 36

Local Government

Provisions Applicable to Counties Only

CHAPTER		PAGE
1.	General Provisions, 36-1-1 through 36-1-26	252
2.	Militia Districts, 36-2-1 through 36-2-7	290
3.	County Boundaries, 36-3-1 through 36-3-27	294
4.	Change or Removal of County Site, 36-4-1 through 36-4-6	304

TABLE OF CONTENTS

CHAPTER		PAGE
5.	Organization of County Government, 36-5-1 through 36-5-29	309
6.	County Treasurer, 36-6-1 through 36-6-28	320
7.	County Surveyor, 36-7-1 through 36-7-16	340
8.	County Police, 36-8-1 through 36-8-7	352
9.	County Property Generally, 36-9-1 through 36-9-11	360
10.	Public Works Contracts, 36-10-1 through 36-10-5	378
11.	Claims against Counties, 36-11-1 through 36-11-7	388
12.	Supervision and Support of Paupers, 36-12-1 through 36-12-5	403
13.	Building, Electrical, and Other Codes, 36-13-1 through 36-13-12	407
14.	County Bridges, 36-14-1 through 36-14-3	413
15.	County Law Library, 36-15-1 through 36-15-12	415
16.	County Historical Container, 36-16-1 through 36-16-5	423
17.	Grants of State Funds to Counties, 36-17-1 through 36-17-25	425
18.	Regulation of Cable Television Systems, 36-18-1 through 36-18-5	431
19.	Immunity from Antitrust Liability, 36-19-1 and 36-19-2. [Redesignated]	434
20.	County Leadership Training, 36-20-1 through 36-20-9	435
21.	Group Health Benefits Program, 36-21-1 through 36-21-10	439
22.	Land Conservation, 36-22-1 through 36-22-15. [Redesignated]	443
23 through 29.	Reserved	444
	Provisions Applicable to Municipal Corporations Only	
30.	General Provisions, 36-30-1 through 36-30-13	445
31.	Incorporation of Municipal Corporations, 36-31-1 through 36-31-12	470
32.	Municipal Courts, 36-32-1 through 36-32-40	485
33.	Liability of Municipal Corporations for Acts or Omissions, 36-33-1 through 36-33-6	505

TABLE OF CONTENTS

CHAPTER	PAGE
34. Powers of Municipal Corporations Generally, 36-34-1 through 36-34-8	563
35. Home Rule Powers, 36-35-1 through 36-35-8	581
36. Annexation of Territory, 36-36-1 through 36-36-119	603
37. Acquisition and Disposition of Real and Personal Property Generally, 36-37-1 through 36-37-10	659
38. Bonds, 36-38-1 through 36-38-23	678
39. Street Improvements, 36-39-1 through 36-39-34	683
40. Grants of State Funds to Municipal Corporations, 36-40-1 through 36-40-46	708
41. Urban Residential Finance Authorities for Large Municipalities, 36-41-1 through 36-41-13	724
42. Downtown Development Authorities, 36-42-1 through 36-42-16	745
43. City Business Improvement Districts, 36-43-1 through 36-43-9	763
44. Redevelopment Powers, 36-44-1 through 36-44-23	767
45. Municipal Training, 36-45-1 through 36-45-20	797
46 through 59. Reserved	801
Provisions Applicable to Counties and Municipal Corporations	
60. General Provisions, 36-60-1 through 36-60-26	802
61. Urban Redevelopment, 36-61-1 through 36-61-19	832
62. Development Authorities, 36-62-1 through 36-62-14	863
62A. Conduct of Members of Local Authorities, 36-62A-1 through 36-62A-22	891
63. Resource Recovery Development Authorities, 36-63-1 through 36-63-11	894
64. Recreation Systems, 36-64-1 through 36-64-15	909
65. Immunity from Antitrust Liability, 36-65-1 through 36-65-2	922
66. Zoning Procedures, 36-66-1 through 36-66-6	924
66A. Transfer of Development Rights, 36-66A-1 through 36-66A-2	936

CHAPTER PAGE

66B. Advanced Broadband Collocation, 36-66B-1 through 36-66B-4 940

67. Zoning Proposal Review Procedures, 36-67-1 through 36-67-6. [Repealed] 944

67A. Conflict of Interest in Zoning Actions, 36-67A-1 through 36-67A-6 945

68. Merger of Municipal Government with County, 36-68-1 through 36-68-4 950

69. Mutual Aid, 36-69-1 through 36-69-10 954

69A. Interlocal Cooperation, 36-69A-1 through 36-69A-9 959

70. Coordinated and Comprehensive Planning and Service Delivery by Counties and Municipalities, 36-70-1 through 36-70-28 965

71. Development Impact Fees, 36-71-1 through 36-71-13 978

72. Abandoned Cemeteries and Burial Grounds, 36-72-1 through 36-72-16 993

73. Contracts for Regional Facilities, 36-73-1 through 36-73-4 1002

74. Local Government Code Enforcement Boards, 36-74-1 through 36-74-50 1004

75. War on Terrorism Local Assistance, 36-75-1 through 36-75-13 1025

76. Expedited Franchising of Cable and Video Services, 36-76-1 through 36-76-11 1039

77 through 79. Reserved 1061

Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities

80. General Provisions, 36-80-1 through 36-80-23 1062

81. Budgets and Audits, 36-81-1 through 36-81-20 1085

82. Bonds, 36-82-1 through 36-82-256 1103

83. Local Government Investment Pool, 36-83-1 through 36-83-8 1224

84. Purchasing Preferences, 36-84-1 1231

85. Interlocal Risk Management Agencies, 36-85-1 through 36-85-20 1232

CHAPTER		PAGE
86.	Local Government Efficiency, 36-86-1 through 36-86-4	1244
87.	Participation in Federal Programs, 36-87-1 through 36-87-2	1248
88.	Enterprise Zones, 36-88-1 through 36-88-10	1251
89.	Homeowner Tax Relief Grants, 36-89-1 through 36-89-6	1259
90.	Local Government Cable Fair Competition, 36-90-1 through 36-90-8	1266
91.	Public Works Bidding, 36-91-1 through 36-91-102	1272
92.	Waiver of Immunity for Motor Vehicle Claims, 36-92-1 through 36-92-5	1301
93.	Infrastructure Development Districts, 36-93-1 through 36-93-26. [Repealed]	1308
Index to Titles 35 and 36		1309

TITLE 35

LAW ENFORCEMENT OFFICERS AND AGENCIES

Chap.

1. General Provisions, 35-1-1 through 35-1-17.
2. Department of Public Safety, 35-2-1 through 35-2-140.
3. Georgia Bureau of Investigation, 35-3-1 through 35-3-191.
4. Georgia Police Academy, 35-4-1 through 35-4-9.
5. Georgia Public Safety Training Center, 35-5-1 through 35-5-7.
6. State Victim Services Commission, 35-6-1 through 35-6-4.
6A. Criminal Justice Coordinating Council, 35-6A-1 through 35-6A-10.
7. Organized Crime Prevention Council, 35-7-1 through 35-7-5. [Repealed]
8. Employment and Training of Peace Officers, 35-8-1 through 35-8-26.
9. Special Policemen, 35-9-1 through 35-9-15.
10. Municipal and County Police Departments' Nomenclature, 35-10-1 through 35-10-11.

Cross references. — Authority of Commissioner to provide for safety and security at farmers' markets; police powers, § 2-10-57. Penalty for commission of aggravated assault or aggravated battery upon a peace officer, §§ 16-5-21, 16-5-24. Campus policemen, T. 20, C. 8. Penalty for refusal or neglect by law enforcement officer to perform duties regarding conduct of elections, § 21-2-593. Duty of state and local law enforcement officers to enforce laws relating to highways, bridges, and ferries, § 32-1-9. Prohibition against compensation of law enforcement officers by municipal corporations by means of providing commissions or percentages of fines and forfeitures derived from arrests, § 36-30-9. Immunity of municipal corporations for torts of policemen, § 36-33-3. Management of emergencies or disasters resulting from manmade or natural causes or enemy attack, T. 38, C. 3. Manner of operation of authorized emergency vehicles when responding to emergency calls or when in pursuit of actual or suspected violators of law, § 40-6-6. Use of radar speed detection devices by law enforcement officers, T. 40, C. 14. Licensing of polygraph examiners, T. 43, C. 36. Indemnification of law enforcement officers, and other public servants, for death or disablement in line of duty, § 45-9-80 et seq. Penalty for assault by officer of state under color of office or commission, § 45-11-3. Reward for information leading to identification, apprehension, and conviction of persons who murder law enforcement officer, § 45-12-36. Emergency

telephone number "9-1-1" system, § 46-5-120 et seq.

CHAPTER 1

GENERAL PROVISIONS

Sec.
35-1-1. Definitions.
35-1-2. Passenger motor vehicle for warden of Georgia State Prison [Repealed].
35-1-3. Subsistence allowance for law enforcement officers.
35-1-4. Requirements for reporting stolen motor vehicles and license plates; notice to owner upon recovery; rules and regulations; failure of law enforcement officer to report; effect on Georgia Crime Information Center.
35-1-5. Unauthorized use of wavelength of radio system adopted by department or Georgia Bureau of Investigation.
35-1-6. Appointment of nonuniformed investigators; salaries; status; assignment; powers.
35-1-7. Liability of law enforcement officers performing duties at the scene of an emergency.
35-1-8. Acquisition, collection, classification, and preservation of information assisting in identifying deceased persons and locating missing persons.
35-1-9. Inspecting or copying records of law enforcement agency for commercial solicitation prohibited; penalty [Repealed].
35-1-10. Training in investigation of family violence incidents.
35-1-11. Police volunteers for traffic control.
35-1-12. Chief of police or law enforcement head; exception.
35-1-13. Completion and transmission of reports from victims of identity fraud.
35-1-14. Written policies for emergency pursuits.
35-1-15. Fresh pursuit by law enforcement officers; authority and responsibilities of officers; applicability.
35-1-16. Training law enforcement officers investigating crimes involving trafficking persons for labor or sexual servitude.
35-1-17. Local law enforcement agencies to enter into agreements with federal agencies for the enforcement of immigration laws.

RESEARCH REFERENCES

Am. Jur. Trials. — Police Misconduct Litigation — Plaintiff's Remedies, 15 Am. Jur. Trials 555.

Police Misconduct Litigation, 35 Am. Jur. Trials 505.

Defense of a Police Misconduct Suit, 38 Am. Jur. Trials 493.

Obtaining Damages in Federal Court for State and Local Police Misconduct, 62 Am. Jur. Trials 547.

35-1-1. Definitions.

As used in this title, the term:

(1) "Board" means the Board of Public Safety.

(2) "Commissioner" means the commissioner of public safety.

(3) "Department" means the Department of Public Safety.

35-1-2. Passenger motor vehicle for warden of Georgia State Prison.

Reserved. Repealed by Ga. L. 2007, p. 114, § 1, effective July 1, 2007.

Editor's notes. — This Code section was based on Ga. L. 1937, p. 322, art. 2, § 13; Ga. L. 1952, p. 3, § 1.

35-1-3. Subsistence allowance for law enforcement officers.

(a) The governing authorities of the several counties, municipal corporations, and other political subdivisions of this state are authorized to designate and set apart a portion of the compensation, whether payable on a salary or fee basis, to sheriffs, deputy sheriffs, patrolmen, policemen, and other law enforcement officers, as a subsistence allowance, which allowance shall not exceed $5.00 for each day actually spent by such sheriff or other law enforcement officer in the performance of his duties.

(b) Nothing in this Code section shall affect any pension system which was being operated by any county, municipal corporation, or political subdivision of this state on March 9, 1956, nor shall this Code section affect any rights of any person under any pension system which was being operated by any county, municipal corporation, or political subdivision on March 9, 1956. (Ga. L. 1956, p. 741, §§ 1, 3.)

Editor's notes. — By a 1963 resolution (Ga. L. 1963, p. 316), the General Assembly ratified an executive order of the Governor dated March 9, 1962, which suspended until the convening of the 1963 Session of the General Assembly any income taxes due the state attributable to the inclusion in gross income of amounts received as subsistence allowances in accordance with this Code section.

35-1-4. Requirements for reporting stolen motor vehicles and license plates; notice to owner upon recovery; rules and regulations; failure of law enforcement officer to report; effect on Georgia Crime Information Center.

(a) As used in this Code section, the term:

(1) "Recovering agency" means the law enforcement agency which recovers a motor vehicle which has previously been reported stolen.

(2) "Reporting agency" means the law enforcement agency which receives a report that a motor vehicle has been stolen or lost and which reports such theft or loss to the Georgia Crime Information Center.

(b) It shall be the duty of every law enforcement officer who receives a report based on reliable information that any motor vehicle has been

stolen or that the license plate for such vehicle has been stolen or lost to report the theft or loss to the Georgia Crime Information Center immediately after receiving such information, unless prior thereto information has been received of the recovery of the vehicle or plate. It shall be the duty of any person who reports the theft of a motor vehicle to provide the law enforcement agency to which the report of theft was made and the Georgia Crime Information Center with a means of contacting the owner of the stolen motor vehicle or the successor in interest to such owner in the event of the recovery of the motor vehicle. Any law enforcement officer, upon receiving information of the recovery of any motor vehicle or license plate which has previously been reported as stolen or lost, shall immediately report the recovery of the motor vehicle or plate directly to the Georgia Crime Information Center. It shall be the duty of the reporting law enforcement agency, the agency to which the vehicle was first reported stolen, to notify the owner or the successor in interest to the owner within 72 hours when a previously reported stolen motor vehicle has been recovered, or within 72 hours after the reporting agency has received notification of recovery if recovery is by another agency. The owner or successor in interest shall not be charged or otherwise incur any storage fee on the recovered stolen motor vehicle until the expiration of at least 24 hours immediately following such notification to the owner or the successor in interest. In the event the reporting agency is different from the recovering agency, the recovering agency shall contact the reporting agency and provide all information required by the guidelines established by the Georgia Crime Information Center and any other relevant information. In all cases, it shall remain the responsibility of the reporting agency to notify the owner or the successor in interest to the owner. This requirement shall be included in the rules and regulations of the board promulgated pursuant to subsection (c) of this Code section. If, after a reasonable attempt, the reporting law enforcement agency is unable to contact the owner or the successor in interest to the owner, a record of such fact shall be made and filed with the incident reports and posted in the record required to be maintained by Code Section 17-5-50.

(c) The board is authorized and directed to promulgate rules and regulations pertaining to the submissions of the reports provided for in subsection (b) of this Code section. Such rules and regulations shall include time limits for the submission of the reports and the forms upon which the reports shall be submitted.

(d) The intentional failure of any law enforcement officer to submit reports as prescribed in subsection (b) of this Code section or the failure to do so through wanton neglect shall constitute cause for removal from office, if the officer is elected, or shall be grounds for dismissal if the officer is a nonelected employee.

(e) The provisions of this Code section shall not be construed to affect the responsibilities of the Georgia Crime Information Center as provided by paragraph (14) of subsection (a) of Code Section 35-3-33. (Ga. L. 1966, p. 733, §§ 2-4; Ga. L. 1984, p. 632, §§ 1, 2; Ga. L. 1987, p. 3, § 35; Ga. L. 1991, p. 723, § 1; Ga. L. 1993, p. 91, § 35; Ga. L. 1993, p. 762, § 1; Ga. L. 2012, p. 775, § 35/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "paragraph (14) of subsection (a) of Code Section 35-3-33" for "paragraph (14) of Code Section 35-3-33" in subsection (e).

Cross references. — Further provisions regarding duty of peace officer to report theft of motor vehicle, § 40-3-5.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "that a motor vehicle" was substituted for "that motor vehicle" in paragraph (a)(2) and "subsection (c)" was substituted for "subsection (b)" in the next-to-last sentence in subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 169, 173, 178, 191 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 148 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 161 et seq., 195 et seq.

35-1-5. Unauthorized use of wavelength of radio system adopted by department or Georgia Bureau of Investigation.

(a) It shall be a misdemeanor for any person, firm, or corporation to use the same wavelength of the radio system adopted by the department without the prior written authorization of the commissioner or to do any act interfering with the proper receipt or transmission of information relating to the department or any division thereof.

(b) It shall be a misdemeanor for any person, firm, or corporation to use the same wavelength of the radio system adopted by the Georgia Bureau of Investigation without the prior written authorization of the director or to do any act interfering with the proper receipt or transmission of information relating to the Georgia Bureau of Investigation. (Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1960, p. 995, § 1.)

Cross references. — Protection of public property generally, §§ 50-16-4, 50-16-14 et seq.

35-1-6. Appointment of nonuniformed investigators; salaries; status; assignment; powers.

(a) The commissioner is authorized to appoint five nonuniformed investigators who shall be certified peace officers pursuant to Chapter

8 of this title, the "Georgia Peace Officer Standards and Training Act." The commissioner shall determine the salaries of such investigators. The investigators shall be in the unclassified service as defined by Code Section 45-20-2 and therefore shall not be governed by any rules of position, classification, appointment, promotion, demotion, transfer, dismissal, qualification, compensation, seniority privileges, tenure, or other such matters concerning their employment as may now or hereafter be established by the State Personnel Board or any successor boards or agencies. The investigators shall be assigned to the Internal Affairs Section of the Department of Public Safety in the office of the commissioner at the department's headquarters complex.

(b) The investigators shall have full arrest powers in cases involving internal affairs and in such cases shall be authorized:

(1) To investigate crimes committed anywhere in the state;

(2) To arrest any person violating the criminal laws of this state;

(3) To serve and execute warrants after notifying the law enforcement agency of the local jurisdiction of the intent to serve such warrant or warrants;

(4) To enforce in general the criminal laws of this state; and

(5) To carry firearms while performing their duties. (Ga. L. 1981, p. 1450, § 2; Ga. L. 1992, p. 3131, § 1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-46/HB 642.)

The 2012 amendment, effective July 1, 2012, in subsection (a), in the third sentence, substituted "as defined by Code Section 45-20-2" for "of the State Personnel Administration", and deleted ", the State Personnel Administration," following "State Personnel Board".

Cross references. — Offenses involving illegal aliens, § 16-11-200 et seq. Determination of immigration status of suspects, § 17-5-100. Protection of public property generally, §§ 50-16-4, 50-16-14 et seq. Secure and verifiable identity document, § 50-36-2. Immigration enforcement review board, § 50-36-3.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 34.

C.J.S. — 67 C.J.S., Officers, § 234 et seq.

35-1-7. Liability of law enforcement officers performing duties at the scene of an emergency.

A law enforcement officer shall not be liable at law for any action or actions done while performing any duty at the scene of an emergency except for gross negligence, willful or wanton misconduct, or malfeasance. As used in this Code section, the term "law enforcement officer" means any peace officer who is employed by this state or any political subdivision thereof and who is required by the terms of his employment, whether by election or appointment, to give his full time to the preservation of public order or the protection of life and property or the prevention of crime. Such term shall include sheriffs and deputy sheriffs. (Code 1933, § 3-1004.3, enacted by Ga. L. 1981, p. 655, § 1.)

Cross references. — Immunity of state and political subdivisions and employees, agents, and representatives thereof for injury or damage arising from emergency management activities, § 38-3-35. Liability of persons rendering emergency care, § 51-1-29. Liability of members of fire departments for acts performed while fighting fires or performed at scenes of emergencies, § 51-1-30. Immunity for operators of external defibrilators, § 51-1-29.3. Limitation on health care liability claims for gross negligence in emergency medical care, § 51-1-29.5.

Law reviews. — For survey article citing developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981). For article, "Georgia's Public Duty Doctrine: The Supreme Court Held Hostage," see 51 Mercer L. Rev. 73 (1999).

For comment, "Good Samaritan Laws — Legal Disarray: An Update," see 38 Mercer L. Rev. 1439 (1987).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers, § 227 et seq.

ALR. — Construction and application of "Good Samaritan" statutes, 68 ALR4th 294.

35-1-8. Acquisition, collection, classification, and preservation of information assisting in identifying deceased persons and locating missing persons.

(a) It shall be the duty of every law enforcement agency to:

(1) Acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(2) Acquire, collect, classify, and preserve immediately any information which would assist in the location of any missing person, including any minor, and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person and the agency shall acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin;

(3) Exchange such records and information as provided in paragraphs (1) and (2) of this subsection with other law enforcement agencies of this state, any other state, or the United States. With respect to missing minors, such information shall be transmitted immediately to other law enforcement agencies; and

(4) Report any case of an unusual illness, health condition, or death, or an unusual cluster of such events, or any other suspicious health related event to the Department of Public Health and the appropriate county board of health.

(b)(1) For purposes of this subsection, "facility" means a facility pursuant to Chapter 3, 4, or 7 of Title 37, relating to treatment of mentally ill, developmentally disabled, and alcoholic or drug dependent persons, or an institution classified as a nursing home pursuant to Code Section 31-7-1.

(2) A person hospitalized or resident in a facility shall be considered to be a missing person at the time such person's unaccounted for absence from that facility is reported by that facility, either by telephone or in writing, to a law enforcement agency.

(c) Any law enforcement agency which receives a report that a person who has Alzheimer's disease or other mental illness involving dementia is missing shall immediately open an investigation for the purpose of determining such person's whereabouts; and no policy for applying any waiting period prior to initiation of a missing persons investigation shall apply in the case of a person who has Alzheimer's disease or other mental illnesses involving dementia. (Code 1981, § 35-1-8, enacted by Ga. L. 1984, p. 690, § 1; Ga. L. 1985, p. 1128, § 1; Ga. L. 1992, p. 6, § 35; Ga. L. 1997, p. 1504, § 1; Ga. L. 2002, p. 1386, § 10; Ga. L. 2009, p. 453, §§ 1-4, 3-5/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in paragraph (a)(4).

Cross references. — Disposition of unclaimed dead bodies, § 31-21-20 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "subsection" was substituted for "Code section" in paragraph (a)(3) and "Chapter" was substituted for "Chapters" in paragraph (b)(1).

Pursuant to Code Section 28-9-5, in 2002, subsection (d) as enacted by Ga. L. 2002, p. 1386, § 10 was redesignated as paragraph (a)(4), "and" was deleted from the end of paragraph (a)(2) and "; and" was substituted for a period at the end of (a)(3).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

For note on the 2002 amendment of this Code section, see 19 Ga. St. U. L. Rev. 1 (2002).

35-1-9. Inspecting or copying records of law enforcement agency for commercial solicitation prohibited; penalty.

Reserved. Repealed by Ga. L. 1999, p. 809, § 2, effective July 1, 1999.

Editor's notes. — This Code section was based on Code 1981, § 35-1-9, enacted by Ga. L. 1991, p. 1868, § 1.

35-1-10. Training in investigation of family violence incidents.

(a) The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety Training Center shall establish guidelines and procedures for the incorporation of training materials and information in:

(1) Methods for identifying, combating, and reporting family violence incidents; and

(2) Methods for identifying and reporting sexual offenses and assisting victims of sexual offenses.

(b) The guidelines and procedures listed in subsection (a) of this Code section shall be for use by law enforcement training centers monitored by the Georgia Peace Officer Standards and Training Council and monitored and funded by the Georgia Public Safety Training Center in all courses for which they have responsibility and oversight. (Code 1981, § 35-1-10, enacted by Ga. L. 1992, p. 2939, § 2; Ga. L. 1993, p. 91, § 35; Ga. L. 1997, p. 1488, § 1; Ga. L. 2004, p. 986, § 1.)

35-1-11. Police volunteers for traffic control.

A police chief of a local law enforcement agency with the approval of the local governing authority shall be authorized to designate and equip police volunteers and to provide training to such police volunteers in the area and manner of traffic control. With the approval of the police chief of a local law enforcement agency or fire chief of a local fire department, a police volunteer shall be authorized to direct and regulate the flow of traffic in the event of a fire, explosion, hurricane, tornado, or other emergency situation. A police volunteer shall not have the power of arrest provided to peace officers. (Code 1981, § 35-1-11, enacted by Ga. L. 1999, p. 654, § 1.)

Cross references. — Obedience to authorized persons directing traffic, § 40-6-2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, Code Section 35-1-11 as enacted by Ga. L. 1999, p. 777, § 1, was redesignated as Code Section 35-1-12.

35-1-12. Chief of police or law enforcement head; exception.

Any county, municipality, or other public subdivision of this state which has a law enforcement agency shall declare a chief of police or a law enforcement head for such law enforcement agency who is required to be a certified peace officer pursuant to the provisions of Chapter 8 of this title, known as the "Georgia Peace Officer Standards and Training Act." The provisions of this Code section shall not apply to sheriffs. (Code 1981, § 35-1-12, enacted by Ga. L. 1999, p. 777, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, Code Section 35-1-11 as enacted by Ga. L. 1999, p. 777, § 1, was redesignated as Code Section 35-1-12.

35-1-13. Completion and transmission of reports from victims of identity fraud.

Notwithstanding any other provision of law, any law enforcement agency that receives a report from a resident of this state that such person has been the victim of identity fraud shall prepare an incident report and transmit the same to the Governor's Office of Consumer Affairs identity fraud repository, as provided in Code Section 16-9-123, notwithstanding the fact that such person's identity may have been used solely to commit one or more criminal offenses beyond the jurisdiction of this state. Copies of such incident reports shall be referred from the Governor's Office of Consumer Affairs to the Georgia Crime Information Center as provided in Chapter 3 of this title and to any jurisdiction in which such identity has been used. (Code 1981, § 35-1-13, enacted by Ga. L. 2002, p. 551, § 4.)

Cross references. — Identity fraud, § 16-9-120 et seq. Fraudulent driver's license or identification card, § 40-5-125.

Law reviews. — For article, "The Growing Threat of Identity Theft and Its Implications for Employers," see 11 Ga. St. B.J. 27 (2006).

For note on the 2002 enactment of this Code section, see 19 Ga. St. U. L. Rev. 81 (2002).

35-1-14. Written policies for emergency pursuits.

On and after January 1, 2004, each state, county, and local law enforcement agency that conducts emergency response and vehicular pursuits shall adopt written policies that set forth the manner in which these operations shall be conducted. Each law enforcement agency may create its own such policies or adopt an existing model. All pursuit policies created or adopted by any law enforcement agency must address situations in which police pursuits cross over into other jurisdictions. Law enforcement agencies which do not comply with the requirements of this Code section are subject to the withholding of any state funding or state administered federal funding. (Code 1981,

§ 35-1-14, enacted by Ga. L. 2003, p. 911, § 1; Ga. L. 2006, p. 72, § 35/SB 465.)

Cross references. — Operation of ambulances and ambulance services generally, T. 31, C. 11. Authorized emergency vehicles, § 40-6-6. Yielding of right of way to authorized emergency vehicles, § 40-6-74. Duty of pedestrians to yield right of way to authorized emergency vehicles, § 40-6-99. Equipment of law enforcement and emergency vehicles, § 40-8-90 et seq.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Negligent Vehicular Police Chase, 41 POF2d 79.

35-1-15. Fresh pursuit by law enforcement officers; authority and responsibilities of officers; applicability.

(a) As used in this Code section, the term:

(1) "Fresh pursuit" means pursuit by a law enforcement officer of a person who is in immediate and continuous flight from the commission of a criminal offense.

(2) "Law enforcement officer" means a person employed or appointed by a state or political subdivision who is granted, by state law, the authority to enforce criminal, traffic, or penal laws of his or her respective state and who possesses the power to effect arrests.

(b) A law enforcement officer from Alabama, Florida, North Carolina, South Carolina, or Tennessee who enters this state in fresh pursuit of a person shall have the same authority to arrest and hold in custody such person within this state as that of a law enforcement officer of this state; provided, however, that the authority granted by this Code section shall be limited to criminal offenses of the pursuing state that also are criminal offenses under the laws of this state and that are punishable by death or imprisonment in excess of one year under the laws of the pursuing state.

(c)(1) When an arrest is made in this state by a law enforcement officer of another state pursuant to this Code section, the law enforcement officer shall, without unnecessary delay, take the person arrested before a judicial officer of this state.

(2) The judicial officer shall conduct a hearing for the limited purpose of determining whether such arrest meets the requirements of this Code section unless the person arrested executes a written waiver of his or her right to a hearing under this Code section. If the judicial officer determines that such arrest was unlawful, he or she shall discharge such person arrested. If the judicial officer determines that such arrest was lawful, he or she shall commit such person

arrested to imprisonment as provided in Code Section 17-13-35. Once such person is imprisoned pursuant to this Code section, the provisions of Chapter 13 of Title 17 shall govern the extradition and return of such person to the state in which the criminal offense was committed.

(d) This Code section shall apply only to a law enforcement officer from Alabama, Florida, North Carolina, South Carolina, or Tennessee where the state in which the law enforcement officer is employed or appointed has enacted a provision similar to this Code section relating to the arrest and custody of a person pursued into a neighboring state. (Code 1981, § 35-1-15, enacted by Ga. L. 2008, p. 157, § 1/HB 983; Ga. L. 2009, p. 8, § 35/SB 46.)

35-1-16. Training law enforcement officers investigating crimes involving trafficking persons for labor or sexual servitude.

(a) The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety Training Center shall establish guidelines and procedures for the incorporation of training materials and information in:

(1) Methods for identifying, combating, and reporting incidents where a person has been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46;

(2) Methods for providing proper detention facilities or alternatives to detention facilities for persons who have been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46, including providing information on therapeutic facilities for such persons; and

(3) Methods for assisting persons who have been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46, including providing information on social service organizations available to assist such person.

(b) The guidelines and procedures listed in subsection (a) of this Code section shall be for use by law enforcement training centers monitored by the Georgia Peace Officer Standards and Training Council and monitored and funded by the Georgia Public Safety Training Center in all courses for which they have responsibility and oversight. (Code 1981, § 35-1-16, enacted by Ga. L. 2011, p. 217, § 8/HB 200.)

Effective date. — This Code section became effective July 1, 2011.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, Code Section 35-1-16, as enacted by Ga. L. 2011, p. 794, § 9/HB 87, was redesignated as Code Section 35-1-17.

Law reviews. — For article on the

2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 131 (2011).

35-1-17. Local law enforcement agencies to enter into agreements with federal agencies for the enforcement of immigration laws.

(a) It is the intent of the General Assembly to encourage Georgia law enforcement officials to work in conjunction with federal immigration authorities and to utilize all resources made available by the federal government to assist state and local law enforcement officers in the enforcement of the immigration laws of this state and of the United States.

(b) **Cooperation with federal authorities.**

(1) To the extent authorized by federal law, state and local government employees, including law enforcement officers and prosecuting attorneys, shall be authorized to send, receive, and maintain information relating to the immigration status of any individual as reasonably needed for public safety purposes. Except as provided by federal law, such employees shall not be prohibited from receiving or maintaining information relating to the immigration status of any individual or sending or exchanging such information with other federal, state, or local governmental entities or employees for official public safety purposes.

(2) State and local agencies shall be authorized to enter into memorandums of understanding and agreements with the United States Department of Justice, the Department of Homeland Security, or any other federal agency for the purpose of enforcing federal immigration and customs laws and the detention, removal, and investigation of illegal aliens and the immigration status of any person in this state. A peace officer acting within the scope of his or her authority under any such memorandum of understanding, agreement, or other authorization from the federal government shall have the power to arrest, with probable cause, any person suspected of being an illegal alien.

(3) Except as provided by federal law, no state or local agency or department shall be prohibited from utilizing available federal resources, including data bases, equipment, grant funds, training, or participation in incentive programs for any public safety purpose related to the enforcement of state and federal immigration laws.

(4) When reasonably possible, applicable state agencies shall consider incentive programs and grant funding for the purpose of assisting and encouraging state and local agencies and departments

to enter into agreements with federal entities and to utilize federal resources consistent with the provisions of this Code section.

(c) **Authority to transport illegal aliens.** If a state or local law enforcement officer has verification that a person is an illegal alien, then such officer shall be authorized to securely transport such illegal alien to a federal facility in this state or to any other temporary point of detention and to reasonably detain such illegal alien when authorized by federal law. Nothing in this Code section shall be construed to hinder or prevent a peace officer or law enforcement agency from arresting or detaining any criminal suspect on other criminal charges.

(d) **Authority to arrest illegal aliens.** When authorized by federal law, a state or local law enforcement officer shall be authorized to arrest any person based on such person's status as an illegal alien or for a violation of any federal immigration law.

(e) **Immunity.** A law enforcement officer or government official or employee, acting in good faith to enforce immigration laws pursuant to an agreement with federal authorities to collect or share immigration status information, or to carry out any provision of this Code section, shall have immunity from damages or liability from such actions. (Code 1981, § 35-1-17, enacted by Ga. L. 2011, p. 794, § 9/HB 87; Ga. L. 2012, p. 775, § 35/HB 942.)

Effective date. — This Code section became effective July 1, 2011. See editor's note for applicability.

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "memorandums of understanding" for "memorandum of understandings" in paragraph (b)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, Code Section 35-1-16, as enacted by Ga. L. 2011, p. 794, § 9/HB 87, was redesignated as Code Section 35-1-17.

Editor's notes. — Ga. L. 2011, p. 794, § 1/HB 87, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21/HB 87, not codified by the General Assembly, provides for severability, and provides, in part, that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22/HB 87, not codified by the General Assembly, provides, in part, that the enactment of this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

Law reviews. — For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 35 (2011). For article, "State Government: Illegal Immigration Reform and Enforcement Act of 2011," see 28 Ga. St. U. L. Rev. 51 (2011).

For comment, "Immigration Detention Reform: No Band Aid Desired," see 60 Emory L. J. 1211 (2011).

CHAPTER 2

DEPARTMENT OF PUBLIC SAFETY

Article 1

General Provisions

Sec.

35-2-1. Creation of Board of Public Safety; composition; appointment and terms of office of members.
35-2-2. Creation of Department of Public Safety.
35-2-3. Commissioner of public safety—Creation; appointment and removal; powers and duties; rules and regulations.
35-2-4. Commissioner of public safety — Membership in Uniform Division; reversion to original rank upon removal without prejudice from office.
35-2-5. Commissioner of public safety — Rank in Uniform Division; chief officer.
35-2-6. Employment of temporary expert assistance.
35-2-7. Deputy commissioner of public safety — Appointment; term of office; rank; membership in Uniform Division; duties; oath.
35-2-8. Comptroller — Appointment; membership in Uniform Division prohibited; bond.
35-2-9. Payment of medical and other similar expenses of members of Georgia State Patrol injured in line of duty; procedure.
35-2-10. Awards to employees for outstanding service, heroism, or other exemplary acts; maximum amount of award; promulgation of rules and regulations for granting awards.
35-2-11. Commissioner authorized to provide and equip lecturers for lectures and demonstrations in public schools.
35-2-12. Contribution to political campaigns by employees of department.
35-2-13. Headquarters for commissioner and deputy commissioner of public safety and divisions.
35-2-14. "Peace officer" defined; enforcement of immigration and custom laws.

Article 2

Georgia State Patrol

35-2-30. Creation and designation.
35-2-31. Composition.
35-2-32. Jurisdiction; primary duty; patrolling of safety rest areas and welcome centers.
35-2-33. Additional duties.
35-2-34. Composition of headquarters staff.
35-2-35. Performance of clerical duties by headquarters staff; transfer of members of headquarters staff by commissioner.
35-2-36. Composition of battalion; rank of battalion personnel; employment of recruits or cadets by commissioner; promulgation of rules and regulations as to enlistment and training of recruits or cadets.
35-2-36.1. Auxiliary Service of the Uniform Division; appointment of members; salary; authority and powers; equipment; eligibility.
35-2-37. Employment of communications officers to support battalion generally.
35-2-38. Division of state into districts or divisions by commissioner.
35-2-39. Provision of barracks and quarters for officers and troopers of Uniform Division.
35-2-40. Purchase, lease, or construction of barracks and equipment for districts or divisions; acceptance of property, equipment, or services.
35-2-41. Municipality and county purchase or conveyance of property for use as division or district headquarters; effect if

Sec.
property has reversionary clause; approval of contracts.
35-2-41.1. Donation or conveyance of property, equipment, or services to the department; procedure.
35-2-42. Compensation of members of Uniform Division, communications officers, recruits, and cadets; subsistence and per diem allowances; receipt of badge and duty weapon upon retirement; incentive pay.
35-2-43. Eligibility for appointment to or enlistment in Uniform Division; appointment or reappointment of discharged members of National Guard, armed forces of the United States, and law enforcement agencies [Repealed].
35-2-44. Enlistment, examination, preliminary training, subsequent instruction, and rules and regulations for discipline and conduct of recruits and troopers of Uniform Division.
35-2-45. Promotions of personnel in Uniform Division.
35-2-46. Dismissal of officers, troopers, and communications officers.
35-2-47. Suspension pending dismissal.
35-2-48. State Patrol Disciplinary Board; composition; appointment and terms of members; conduct of hearings by board; recommendation to commissioner; finality of commissioner's decision [Repealed].
35-2-49. Provision of uniforms and equipment to sworn members of the Department of Public Safety and radio operators; retention of weapons and badges upon retirement.
35-2-49.1. Retention of badge and weapon by disabled law enforcement officer.
35-2-50. Purchasing of uniforms, supplies, and equipment.
35-2-51. Storeroom for excess clothing, equipment, and other articles; disposition of old and worn equipment.
Sec.
35-2-52. Clothing allowance for members of Uniform Division assigned permanently to personal security or special duty assignments.
35-2-53. Members of Uniform Division to receive no costs or emoluments; exception for rewards; payment and distribution of fines and costs.
35-2-54. Purchase of group insurance.
35-2-55. Compensatory time off for members of Uniform Division working on state holiday.
35-2-56. Use of motor vehicles or other equipment by members of Uniform Division.
35-2-57. Use of retired unmarked pursuit cars for training.
35-2-58. Approval by board to sell or trade surplus motor vehicles towards purchase of new motor vehicles.

Article 3

Security Guard Division

35-2-70. Establishment.
35-2-71. Powers and duties of security guards.
35-2-72. Compensation, uniforms, and equipment of security guards.
35-2-73. Security guards for protection of Governor, Lieutenant Governor, Speaker of the House, and their families and executive department; transportation of family members at state expense.
35-2-74. Governor to prescribe coverage by State Personnel Board.
35-2-75. Adoption of rules, regulations, and orders by board.

Article 4

Department of Public Safety Nomenclature

35-2-80. Short title.
35-2-81. Definitions.
35-2-82. Permission required for use of department nomenclature.
35-2-83. Permission required for use of department symbols.
35-2-84. Procedure for seeking permis-

Sec.
sion to use department nomenclature or symbols.
35-2-85. Injunctions against violations.
35-2-86. Civil penalties.
35-2-87. Damage suits against violators.
35-2-88. Criminal penalties.

Article 5

Motor Carrier Compliance Division

35-2-100. Creation; members designated as law enforcement officers.
35-2-101. Jurisdiction; duties and powers; use of dogs to detect controlled substances; off-duty use of department vehicles.
35-2-102. Weight inspector positions; training; powers and responsibilities; limits on responsibilities.

Article 6

Capitol Police Division

Sec.
35-2-120. Definitions.
35-2-121. Establishment of Capitol Police Division; staffing.
35-2-122. Jurisdiction; duties; power.
35-2-123. Use of vehicles by off-duty law enforcement officer.
35-2-124. Reimbursement to the department for costs.

Article 7

State Aviation Operations

35-2-140. Transfer of certain personnel, aircraft, and other assets from the Georgia Aviation Authority to the Department of Public Safety.

Cross references. — Powers and duties of the Department of Driver Services with regard to drivers' licenses, T. 40, C. 5. Juvenile traffic offenses, Uniform Rules for the Juvenile Court of Georgia, Rule 13.

Administrative rules and regulations. — Rules of general applicability, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570.

ARTICLE 1

GENERAL PROVISIONS

35-2-1. Creation of Board of Public Safety; composition; appointment and terms of office of members.

(a) There is created a Board of Public Safety which shall establish the general policy to be followed by the Department of Public Safety.

(b) The board shall consist of 15 members:

(1) The following three members serve as follows:

(A) The Governor, ex officio, who shall be chairperson of the board;

(B) An appointee of the Governor who shall not be the Attorney General; and

(C) The official in charge of the Department of Corrections, ex officio.

(2) Five members shall be selected as follows:

(A) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia Sheriffs Association; the first representative shall serve an initial term ending on January 20, 1975, each subsequent term being three years;

(B) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia Association of Chiefs of Police; the first representative shall serve an initial term ending on January 20, 1974, each subsequent term being three years;

(C) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the District Attorneys Association of Georgia; the first representative shall serve an initial term ending on January 20, 1973, each subsequent term being three years;

(D) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia State Firemen's Association; the first representative shall serve an initial term ending on January 20, 1984, each subsequent term being for three years; and

(E) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia Association of Fire Chiefs; the first representative shall serve an initial term beginning on January 21, 2011, each term being for three years.

(3) Four members shall be selected as follows:

(A) Two members appointed by the Governor. The first appointees shall serve an initial term ending on January 20, 2002. Each subsequent term shall be for three years;

(B) One member appointed by the Lieutenant Governor. The first appointee shall serve an initial term ending on January 20, 2002. Each subsequent term shall be for three years; and

(C) One member appointed by the Speaker of the House of Representatives. The first appointee shall serve an initial term ending on January 20, 2002. Each subsequent term shall be for three years.

(4) By majority vote the board shall appoint three members from the state at large; no person so appointed shall be an officer or employee of any state or local governmental entity at the time of his or her appointment to or during his or her membership on the board. All terms of the three at-large members shall be four years. Any

vacancy in the at-large membership shall be filled by the board for the unexpired term.

(c) Appointments made pursuant to paragraph (2) of subsection (b) of this Code section at times when the Senate is not in session shall be effective ad interim. (Ga. L. 1972, p. 1015, §§ 18, 1609; Ga. L. 1981, p. 814, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1999, p. 1211, § 1; Ga. L. 2009, p. 831, § 1/HB 607; Ga. L. 2012, p. 775, § 35/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "1984, each subsequent term being" for "1984. Each subsequent term shall be" in subparagraph (b)(2)(D); and substituted "2011, each term being" for "2011. Each term shall be" in subparagraph (b)(2)(E).

Cross references. — Powers and duties of board with regard to Georgia Fire Academy, T. 25, C. 7.

Editor's notes. — Ga. L. 2009, p. 831, § 2/HB 607, not codified by the General Assembly, provides that the amendment to this Code section shall apply to appointments made on or after January 20, 2011.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 23, 34, 35. 63C Am. Jur. 2d, Public Officers and Employees, §§ 87, 90, 91.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 46 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 10 et seq., 23.

35-2-2. Creation of Department of Public Safety.

There is created a Department of Public Safety. (Ga. L. 1937, p. 322, art. 1, § 1; Ga. L. 1972, p. 1015, § 1601.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 23.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 10 et seq., 23.

35-2-3. Commissioner of public safety—Creation; appointment and removal; powers and duties; rules and regulations.

(a) There is created the position of commissioner of public safety. The commissioner shall be the chief administrative officer and shall be both appointed and removed by the board with the approval of the Governor. Except as otherwise provided by law and subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by law.

(b) The commissioner shall be authorized to promulgate rules and regulations as necessary to carry out his or her official duties. (Ga. L. 1972, p. 1015, § 1602; Ga. L. 1996, p. 271, § 1.)

JUDICIAL DECISIONS

Commissioner of public safety is a public officer. Blackmon v. State, 153 Ga. App. 359, 265 S.E.2d 320 (1980).

Cited in Williams v. State, 138 Ga. App. 662, 226 S.E.2d 816 (1976).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 34, 35.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 10 et seq.

35-2-4. Commissioner of public safety — Membership in Uniform Division; reversion to original rank upon removal without prejudice from office.

The commissioner may be a member of the Uniform Division of the department and upon removal from such office without prejudice he shall revert to his original rank in the Uniform Division which he held when he was appointed to office. (Ga. L. 1949, p. 70, § 1.)

35-2-5. Commissioner of public safety — Rank in Uniform Division; chief officer.

As prescribed by the board, the commissioner may rank as senior colonel in the Uniform Division and may be the chief officer thereof or the board may appoint a colonel in the Uniform Division as the chief officer thereof. (Ga. L. 1937, p. 322, art. 1, § 4; Ga. L. 1949, p. 70, § 2; Ga. L. 2000, p. 951, § 12-3.)

Editor's notes. — Ga. L. 2000, p. 951, § 13-1, not codified by the General Assembly, provides that the 2000 Act which amended this Code section became effective April 28, 2000, for purposes of authorization for appointments as provided in this Code section as amended by § 12-3 of the 2000 Act.

35-2-6. Employment of temporary expert assistance.

In perfecting the organization of the department or any division thereof, the commissioner shall be authorized with approval of the board to employ and provide compensation for such expert temporary assistance as may be necessary. (Ga. L. 1937, p. 322, art. 2, § 8.)

35-2-7. Deputy commissioner of public safety — Appointment; term of office; rank; membership in Uniform Division; duties; oath.

(a) The commissioner is vested with authority to appoint a deputy commissioner of public safety, who shall have the rank of lieutenant colonel in the Uniform Division of the department.

(b) The deputy commissioner may be a member of the Uniform Division of the department and upon removal from office without prejudice he shall revert to the original rank in the Uniform Division which he held when he was appointed to office.

(c) His appointment shall be subject to confirmation by the board.

(d) The deputy commissioner shall perform such duties as he may be charged with by the commissioner, and in case of a vacancy shall act as commissioner until an appointment is made to fill the vacancy.

(e) The deputy commissioner shall take the same oath as that required of the commissioner, which oath shall be administered by the commissioner. (Ga. L. 1937, p. 332, art. 1, § 5; Ga. L. 1943, p. 196, § 3; Ga. L. 1949, p. 70, § 3; Ga. L. 1958, p. 296, § 2; Ga. L. 1967, p. 98, § 2; Ga. L. 1969, p. 145, § 1; Ga. L. 1972, p. 409, § 1; Ga. L. 1989, p. 1285, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Deputy commissioner entitled to same longevity increases as battalion members. — Deputy director (now deputy commissioner) of public safety is entitled to the same longevity increases as are members of the battalion. 1967 Op. Att'y Gen. No. 67-134.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 34, 35. 63C Am. Jur. 2d, Public Officers and Employees, §§ 1 et seq., 48 et seq., 70, 88, 105 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 21 et seq., 86 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 10 et seq., 23.

35-2-8. Comptroller — Appointment; membership in Uniform Division prohibited; bond.

The commissioner shall appoint a comptroller to ensure the proper receipt, accounting, and disbursement of funds of the department. The comptroller shall not be a member of the Uniform Division of the department. The comptroller shall give a good and sufficient surety bond in the amount of $100,000.00, payable to the Governor and his successors in office and to be approved by the commissioner, conditioned for the faithful discharge of his duties and the faithful accounting of all funds received by him. (Ga. L. 1977, p. 228, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 34, 35. 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70 et seq., 230 et seq., 241, 252, 255, 257. 70 Am. Jur. 2d, Sheriffs, Police and Constables, §§ 7 et seq., 40, 41.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 224 et seq., 234 et seq. 73

C.J.S., Public Administrative Law and Procedure, §§ 10 et seq., 23.

35-2-9. Payment of medical and other similar expenses of members of Georgia State Patrol injured in line of duty; procedure.

The department is authorized to pay all medical, surgical, hospital, nursing, and other similar expenses incurred by any member of the Georgia State Patrol as a result of injuries received in the line of duty. The department is authorized to make such payments in addition to any award made by the State Board of Workers' Compensation based on such injuries. Such payments shall only be made upon proper presentation of bills to the comptroller of the department. The comptroller and the injured party shall together ascertain the correctness of all bills presented. No payments shall be made without the approval of the commissioner. (Ga. L. 1953, Nov.-Dec. Sess., p. 392, § 1.)

Cross references. — Workers' compensation generally, T. 34, C. 9. State employees' health insurance, § 45-18-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Department's authorized payments in addition to workers' compensation award. — Department is authorized to pay all medical, surgical, hospital, nursing, and other similar expenses incurred by any member of the Georgia State Patrol as a result of injury received in the line of duty; such payments may be made in addition to any award made by the Board of Workers' Compensation based on the injury. 1974 Op. Att'y Gen. No. 74-82.

Payment allowed even if no workers' compensation award made. — Department is authorized to pay all hospital and surgical bills of the members of the state patrol under certain conditions, even if no award has been made by workers' compensation. 1960-61 Op. Att'y Gen. p. 423.

Department may pay expenses resulting from original injury, but not improper treatment. — Department may properly pay additional medical expenses incurred by a member of the Georgia State Patrol provided that the department is satisfied from evidence before it, or to be required by it, that the expenses are a result of the original injuries and not as a result of improper treatment of the injuries, or other events that transpired subsequent thereto. 1957 Op. Att'y Gen. p. 218.

Upon payment, department becomes subrogated to employee's rights. — Department has authority to pay medical expenses incurred by employees when engaged in the line of duty and, upon payment, the department becomes subrogated to the rights of the employee. 1960-61 Op. Att'y Gen. p. 425.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 279 et seq.

35-2-10. Awards to employees for outstanding service, heroism, or other exemplary acts; maximum amount of award; promulgation of rules and regulations for granting awards.

(a) The department shall have the authority to make awards to employees of the department on behalf of the department or the state in recognition of outstanding service, heroism, or other exemplary acts arising out of the performance of their duties. All expenditures incurred in making such awards shall be defrayed from the department's regular operating budget and shall not exceed $100.00 per award.

(b) The board shall promulgate rules and regulations in connection with the granting of the awards provided for in this Code section. (Ga. L. 1977, p. 246, §§ 1, 2.)

35-2-11. Commissioner authorized to provide and equip lecturers for lectures and demonstrations in public schools.

The commissioner is authorized to furnish one or more lecturers to conduct lectures and demonstrations relating to public safety in the public schools in cooperation with school authorities. The commissioner may furnish such lecturers with appropriate literature and equipment. (Ga. L. 1937, p. 322, art. 3, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 230, 241.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 224, 225, 234 et seq.

35-2-12. Contribution to political campaigns by employees of department.

No person in the employ of the department shall, either directly or indirectly, contribute any money or any other thing of value to any person, organization, or committee for political campaign or election in county or state primaries or general elections. (Ga. L. 1949, p. 70, § 4; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, § 3; Ga. L. 1994, p. 1921, § 1.)

JUDICIAL DECISIONS

All "peace officers" are not bound by the prohibitions placed on employees of the Department of Public Safety. Segars v. Fulton County, 644 F. Supp. 682 (N.D. Ga. 1986).

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality. — O.C.G.A. § 35-2-12 may constitutionally be enforced against employees of the Department of Public Safety. 2000 Op. Att'y Gen. No. 2000-7.

35-2-13. Headquarters for commissioner and deputy commissioner of public safety and divisions.

The department is authorized to provide comfortable and accessible headquarters for the commissioner and deputy commissioner of public safety and for the various divisions thereof. The department is authorized and empowered to provide such quarters and offices by purchase, lease, or construction, any contract made or title acquired to be made in the name of and on behalf of the State of Georgia. (Ga. L. 1937, p. 322, § 10.)

35-2-14. "Peace officer" defined; enforcement of immigration and custom laws.

(a) As used in this Code section, the term "peace officer" means peace officer as defined in subparagraph (A) of paragraph (8) of Code Section 35-8-2, as amended.

(b) The commissioner is authorized and directed to negotiate the terms of a memorandum of understanding between the State of Georgia and the United States Department of Justice or Department of Homeland Security concerning the enforcement of federal immigration and customs laws, detention and removals, and investigations in the State of Georgia.

(c) The memorandum of understanding negotiated pursuant to subsection (b) of this Code section shall be signed on behalf of the state by the commissioner and the Governor or as otherwise required by the appropriate federal agency.

(d) The commissioner shall annually designate no fewer than ten peace officers to apply to be trained pursuant to the memorandum of understanding provided for in subsections (b) and (c) of this Code section. Such training shall be funded pursuant to any federal Homeland Security Appropriation Act or any subsequent source of federal funding. The provisions of this subsection shall become effective upon such funding.

(e) A peace officer certified as trained in accordance with the memorandum of understanding as provided in this Code section is authorized to enforce federal immigration and customs laws while performing within the scope of his or her authorized duties. (Code 1981,

§ 35-2-14, enacted by Ga. L. 2006, p. 105, § 4/SB 529; Ga. L. 2011, p. 794, § 10/HB 87.)

The 2011 amendment, effective July 1, 2011, in subsection (d), substituted "shall annually designate no fewer than ten peace officers to apply to be trained" for "shall designate appropriate peace officers to be trained" in the first sentence, and substituted "any federal Homeland Security Appropriation Act or any" for "the federal Homeland Security Appropriation Act of 2006, Public Law 109-90, or any" in the second sentence. See editor's note for applicability.

Cross references. — Registration of Immigration Assistance Act, § 43-20A-1 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "customs" was substituted for "custom" near the end of subsection (b).

Editor's notes. — Ga. L. 2006, p. 105, § 1/SB 529, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Security and Immigration Compliance Act.' All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law."

The provisions of subsection (d) of this Code section become effective upon funding provided pursuant to the federal Homeland Security Appropriation Act of 2006, Public Law 109-90, or any subsequent source of federal funding. Federal funds were appropriated in 2008.

Ga. L. 2011, p. 794, § 1/HB 87, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21/HB 87, not codified by the General Assembly, provides for severability, and provides, in part, that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22/HB 87, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

Law reviews. — For article on 2006 enactment of this Code section, see 23 Ga. St. U. L. Rev. 247 (2006). For article, "The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia — 'Think Globally ... Act Locally'," see 13 Ga. St. B.J. 14 (2007). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 35 (2011). For article, "State Government: Illegal Immigration Reform and Enforcement Act of 2011," see 28 Ga. St. U. L. Rev. 51 (2011).

ARTICLE 2

GEORGIA STATE PATROL

35-2-30. Creation and designation.

There is created and established a division of the Department of Public Safety to be known as the Uniform Division, the members of which shall be known and designated as the "Georgia State Patrol." (Ga. L. 1937, p. 322, art. 2, § 1.)

JUDICIAL DECISIONS

Cited in Perry v. State, 118 Ga. App. 22, 162 S.E.2d 466 (1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 23.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 10 et seq.

35-2-31. Composition.

The Uniform Division of the Department of Public Safety shall consist of:

(1) The officers, noncommissioned officers, and troopers of the headquarters staff;

(2) The officers, noncommissioned officers, and troopers of one battalion. (Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1949, p. 70, § 4; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, §§ 3, 4; Ga. L. 1960, p. 132, § 1; Ga. L. 1975, p. 1115, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Deputy commissioner entitled to same longevity increases as battalion members. — Deputy director (now deputy commissioner) of public safety is entitled to the same longevity increases as are members of the battalion. 1967 Op. Att'y Gen. No. 67-134.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 34, 35.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 10 et seq.

35-2-32. Jurisdiction; primary duty; patrolling of safety rest areas and welcome centers.

(a) The Uniform Division of the department shall have jurisdiction throughout this state with such duties and powers as are prescribed by law.

(b) It shall be the primary duty of the Uniform Division to patrol the public roads and highways of this state, including interstate and state maintained highways, and to safeguard the lives and property of the public; and such duty shall also include accident investigation and traffic enforcement. The Uniform Division shall prevent, detect, and investigate violations of the criminal laws of this state, any other state, or the United States which are committed upon these public roads and

highways or upon property appertaining thereto and shall apprehend and arrest those persons who violate such criminal laws.

(c) Without limiting the generality of any other provisions of this article, it is specifically provided that the Uniform Division shall have jurisdiction to patrol safety rest areas and welcome centers located on or adjacent to the state highway system for the purposes of: (1) enforcing the laws of this state relating to the use, ownership, control, licensing, and registration of motor vehicles; (2) enforcing the criminal laws of this state; and (3) enforcing the laws of this state and the regulations of the Department of Transportation with respect to the use of such safety rest areas and welcome centers. The limitations of paragraph (5) of subsection (a) of Code Section 35-2-33 shall not apply with respect to enforcement in safety rest areas and welcome centers. (Ga. L. 1937, p. 322, art. 2, § 14; Ga. L. 1950, p. 77, § 1; Ga. L. 1970, p. 577, § 1; Ga. L. 1981, p. 1450, § 1; Ga. L. 1990, p. 1329, § 1.)

Cross references. — Powers and duties of Uniform Division upon and within the limits of Jekyll Island, § 12-3-236.1.

JUDICIAL DECISIONS

Error for court not to instruct jury on "good faith" defense in false imprisonment trial. — Since, during the trial of a state patrolman for false imprisonment, it appeared from the evidence that the patrolman's sole defense was that the patrolman made the arrest for drunkenness upon the public highway without a warrant because the patrolman, in good faith, had probable cause to believe that the offense was being committed in the patrolman's presence, a failure to instruct the jury on a good faith defense was an error, requiring the grant of a new trial. Henderson v. State, 95 Ga. App. 830, 99 S.E.2d 270 (1957).

Cited in Strong v. State, 246 Ga. 612, 272 S.E.2d 281 (1980); Allison v. State, 188 Ga. App. 460, 373 S.E.2d 273 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Parameters of statutory authority. — When the function to be performed involves something other than the enforcement of traffic and motor vehicle laws, the enforcement of criminal laws on state property, or apprehending fugitives, some further requirement is necessary to authorize the activity; that further requirement may be either the Governor's direction to suppress riots or labor strikes or assist in a criminal case investigation, a local law enforcement request for assistance in a criminal matter, or the failure to prevent or detect a criminal act because of the unavailability of a local law enforcement officer at the time. 1987 Op. Att'y Gen. No. 87-14.

Authority within local jurisdictions. — Local law enforcement agency may not prevent the state patrol from investigating accidents on public roads and highways within the jurisdiction of the local agency. 1997 Op. Att'y Gen. No. 97-4.

State Patrol cannot enforce traffic laws in Fort Benning Reservation. — Provisions of O.C.G.A. §§ 35-2-32 and 35-2-33 do not give the Georgia State Patrol authority to enforce traffic laws on that portion of U.S. 27 and U.S. 280 run-

ning through Fort Benning Reservation. 1981 Op. Att'y Gen. No. 81-83.

Traffic control at sporting events. — To safeguard the lives and property of the public, the Uniform Division is authorized to provide traffic enforcement and control on public roads and highways affected by large crowds at sporting events such as football games at state universities. 1987 Op. Att'y Gen. No. 87-14.

Providing security at sporting events. — If none of the triggering mechanisms for invoking the Uniform Division's authority is present, the Uniform Division is without authority to provide security for coaches and players or crowd control at professional, college, and high school sporting events in Georgia. 1987 Op. Att'y Gen. No. 87-14 (rendered prior to the 1988 amendment to O.C.G.A. § 35-2-33.)

If a coach or anyone else is attacked in the presence of a trooper and there is no local law enforcement officer immediately available to respond, the trooper is a sworn officer and has a duty, recognized by statute, to intervene to stop the criminal act and arrest the attacker; in so doing, the trooper is acting within the scope of employment, and, under the terms of the present policy, is entitled to insurance coverage. However, there is no authority for the Uniform Division to provide private security, within or without the boundaries of Georgia. 1987 Op. Att'y Gen. No. 87-14.

Authority to control, manage, and close public highways is vested in the Department of Transportation, not the Department of Public Safety. 1973 Op. Att'y Gen. No. 73-184.

Advertising campaign designed to promote safe and sane driving within section's purview. — This section clearly makes it the duty of the state patrol to endeavor to prevent criminal offenses from being committed on the highways, and, in addition, to safeguard the lives and property of the public; an advertising campaign designed to promote safe and sane driving would come within the purview of this section. 1945-47 Op. Att'y Gen. p. 601 (decided under Ga. L. 1937, p. 322, art. 2, § 14; see O.C.G.A. § 35-2-32).

It is the duty and responsibility of the state patrol to enforce safety inspection laws in regard to dealers of used motor vehicles. 1967 Op. Att'y Gen. No. 67-204.

Authority of trooper in another state. — Member of the Uniform Division on official department business in another state has such law enforcement authority while there as the law of that state may confer upon the member. 1987 Op. Att'y Gen. No. 87-14.

County sheriff not required to investigate accident on private property. — There is no specific statutory mandate which would require a county sheriff to investigate an accident occurring on private property. 1968 Op. Att'y Gen. No. 68-206.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 48 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 42 et seq.

35-2-33. Additional duties.

(a) It shall be the duty of the Uniform Division:

(1) To enforce the laws of this state relating to the use, ownership, control, licensing, and registration of motor vehicles and Code Sections 32-9-4 and 40-6-54, relating to designation of restricted travel lanes;

(2) On property owned by this state or any agency thereof:

(A) To enforce the criminal laws of this state;

(B) To apprehend and arrest any person who violates the criminal laws of this state; and

(C) To serve and execute warrants;

(3) To apprehend and arrest any person who is a fugitive from justice;

(4) To suppress riots, labor strikes, or picketing, as provided by law, at the direction of the Governor on request made by the chief of police of any municipality or the sheriff of any county; and

(5)(A) To make initial inquiries into any situation which occurs off the public roads and highways and which occurs under circumstances where it has reasonable grounds to believe a criminal law has been, is being, or is about to be violated. The Uniform Division shall further have the duty to make arrests in connection with such initial inquiries.

(B) Any initial inquiry or arrest which is made pursuant to subparagraph (A) of this paragraph shall be initiated only if a local law enforcement officer is not readily available and the member of the Uniform Division reasonably believes that his failure to act could result in the commission of a criminal act or the escape of a person who has committed a criminal act. In any action taken by the Uniform Division under subparagraph (A) of this paragraph, the Uniform Division shall relinquish jurisdiction to the local law enforcement agency as soon as possible under the circumstances.

(b) The Uniform Division shall cooperate with all law enforcement agencies of this state or any municipality, county, or other political subdivision thereof in enforcing the laws of this state, any other state, or the United States relating to the operation of motor vehicles. The commissioner may, and in the case of a request by the Governor shall, authorize and direct the Uniform Division to cooperate with and render assistance to any law enforcement agency of this state or any municipality, county, or other political subdivision thereof in any criminal case, in the prevention or detection of violations of any law, or in the apprehension or arrest of persons who violate the criminal laws of this state, any other state, or the United States, upon a request by the governing authority or chief law enforcement officer of any municipality, the sheriff of any county, a judge of the superior court of any county, or the Governor.

(c) The commissioner may, and in the case of a request by the Governor shall, authorize and direct the Uniform Division to:

(1) Provide security protection services, or transportation or escort services, or both to coaches, players, and referees and other officials in connection with collegiate athletic events involving an institution

of the University System of Georgia which offers four-year postsecondary degrees when such security protection services, or transportation or escort services, or both are necessary or appropriate to deter actual or potential threats to the safety of such individuals;

(2) Provide services which are necessary or appropriate to promote the safety of the collegiate athletic teams of such institutions of the University System of Georgia which offer four-year postsecondary degrees or the general public or both or to facilitate travel by such collegiate athletic teams or the general public or both;

(3) Allow personnel of the Uniform Division, while on duty and in uniform, to accompany collegiate athletic teams of such institutions of the University System of Georgia which offer four-year postsecondary degrees traveling to athletic events inside or outside the state and to make use of department vehicles for this purpose, provided that the department shall be reimbursed by such affected institution of the University System of Georgia for any expenses incurred by such personnel of the Uniform Division while carrying out such duties; and

(4) Allow personnel of the Uniform Division, while on duty and in uniform, to provide security at special events at any location, whether or not the event takes place on state property.

(d) In no case where the Uniform Division is exercising any power or performing any duty authorized by this Code section shall it usurp any of the duties or authority of any sheriff of any county, any chief of police of any municipality, or any chief of police of any county police force.

(e) The duties and powers of the Uniform Division, as provided for in this Code section, shall be in addition to any other duties or powers provided by law. (Ga. L. 1937, p. 322, art. 2, §§ 14, 15; Ga. L. 1950, p. 77, § 1; Ga. L. 1956, p. 495, § 1; Ga. L. 1970, p. 577, § 1; Ga. L. 1974, p. 447, § 1; Ga. L. 1978, p. 254, § 1; Ga. L. 1981, p. 1450, § 1; Ga. L. 1988, p. 1982, § 1; Ga. L. 1989, p. 14, § 35; Ga. L. 1996, p. 1507, § 1; Ga. L. 2005, p. 334, § 13A-1/HB 501.)

Cross references. — Powers and duties of Uniform Division upon and within the limits of Jeckyll Island, § 12-3-236.1. Registration and licensing of motor vehicles generally, T. 40, C. 2.

JUDICIAL DECISIONS

Criminal investigative functions of pharmacy board transferred to department. — Under the Executive Reorganization Act of 1972, the functions of the Georgia State Board of Pharmacy relating to alleged violations pertaining to drugs under former Code 1933, § 79A-208 were transferred to the Department of Public Safety, and the criminal investigative functions so transferred were assigned to the Division of Investigation (now Georgia Bureau of Investigation).

Smith v. State, 131 Ga. App. 722, 206 S.E.2d 711 (1974).

Executive order authorizing arrests effective beyond expiration of Governor's term. — Executive order authorizing the Georgia Bureau of Investigation to make arrests, until rescinded or superseded, is effective beyond the expiration of the term of the Governor who issued the order. Baxter v. State, 134 Ga. App. 286, 214 S.E.2d 578, cert. denied, 423 U.S. 895, 96 S. Ct. 194, 46 L. Ed. 2d 127 (1975).

Evidence of "good faith" arrest in false imprisonment action admissible. — If, in a false imprisonment action, there is evidence from which the jury would be authorized to find that the defendant officer in good faith and with probable cause arrested the plaintiff for drunkenness, any facts, circumstances, or information on which the defendant officer acted in making the arrest are admissible, not as proof of the facts, but as evidence that the defendant officer in making the arrest did so upon reasonable ground of suspicion. Henderson v. State, 95 Ga. App. 830, 99 S.E.2d 270 (1957).

Error not to instruct jury on defense of "good faith" arrest in false imprisonment action. — Since, during the trial of a state patrolman for false imprisonment, it appears from the evidence that the patrolman's sole defense was that the patrolman made the arrest for drunkenness upon the public highway without a warrant because the patrolman in good faith had probable cause to believe that the offense was being committed in the patrolman's presence, it is error, requiring the grant of a new trial, for the trial court to fail to instruct the jury on this defense. Henderson v. State, 95 Ga. App. 830, 99 S.E.2d 270 (1957).

Roadblocks permitted. — O.C.G.A. § 35-2-33(a)(1) permits the setting up of roadblocks by police officials for the purpose of checking the legality of licensing of drivers and registration of vehicles. Davis v. State, 194 Ga. App. 482, 391 S.E.2d 124 (1990).

Cited in Dodd v. State, 85 Ga. App. 589, 69 S.E.2d 784 (1952); Strong v. State, 246 Ga. 612, 272 S.E.2d 281 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Parameters of statutory authority. — When the function to be performed involves something other than the enforcement of traffic and motor vehicle laws, the enforcement of criminal laws on state property, or apprehending fugitives, some further requirement is necessary to authorize the activity; that further requirement may be either the Governor's direction to suppress riots or labor strikes or assist in a criminal case investigation, a local law enforcement request for assistance in a criminal matter, or the failure to prevent or detect a criminal act because of the unavailability of a local law enforcement officer at the time. 1987 Op. Att'y Gen. No. 87-14.

State Patrol cannot enforce traffic laws in Fort Benning Reservation. — Provisions of O.C.G.A. §§ 35-2-32 and 35-2-33 do not give the Georgia State Patrol authority to enforce traffic laws on that portion of U.S. 27 and U.S. 280 running through Fort Benning Reservation. 1981 Op. Att'y Gen. No. 81-83.

Traffic control at sporting events. — To safeguard the lives and property of the public, the Uniform Division is authorized to provide traffic enforcement and control on public roads and highways affected by large crowds at sporting events such as football games at state universities. 1987 Op. Att'y Gen. No. 87-14.

Providing security at sporting events. — If none of the triggering mechanisms for invoking the Uniform Division's authority is present, the Uniform Division is without authority to provide security for coaches and players or crowd control at professional, college, and high school sporting events in Georgia. 1987 Op. Att'y Gen. No. 87-14 (decided prior to the 1988 amendment to O.C.G.A. § 35-2-33.)

If a coach or anyone else is attacked in the presence of a trooper and there is no local law enforcement officer immediately available to respond, the trooper is a sworn officer and has a duty, recognized by

statute, to intervene to stop the criminal act and arrest the attacker; in so doing, the trooper is acting within the scope of employment, and, under the terms of the present policy, is entitled to insurance coverage. However, there is no authority for the Uniform Division to provide private security, within or without the boundaries of Georgia. 1987 Op. Att'y Gen. No. 87-14.

Carrying dynamite without permit proper jurisdiction for state patrol. — Carrying dynamite without a permit in an automobile is a law regulating the use of a motor vehicle or an offense committed upon the state highway and therefore would be proper jurisdiction for the state patrol. 1967 Op. Att'y Gen. No. 67-324.

State patrol may seize fireworks, but not arrest off highway. — State patrol may seize fireworks which the state patrol finds, declare the fireworks contraband, and destroy the fireworks even though the fireworks are found off the highways of this state, but any arrest made off the highways would have to be accomplished by the local authorities; however, any violation observed on the highways may give rise to a proper arrest by the members of the state patrol. 1962 Op. Att'y Gen. p. 431.

Section as expression of how Governor's powers performed. — Provisions of Ga. L. 1956, p. 495, § 1 (see O.C.G.A. § 35-2-33) are merely one expression of the legislature as to how the broad powers of the Governor may be performed; the statute should not be considered exhaustive by any means. 1963-65 Op. Att'y Gen. p. 42.

Governor may authorize Georgia Bureau of Investigation to conduct investigations and make arrests in localities. — Governor has the power and the authority to authorize the Georgia Bureau of Investigation to conduct investigations and make arrests in any criminal case in any county or municipality of this state. 1963-65 Op. Att'y Gen. p. 532.

Governor may order state patrol to make arrests, even in absence of request from localities. — Governor is authorized to order the director (now commissioner) of public safety to direct members of the Georgia State Patrol to make arrests for violations of the laws of this state; this would be true even in the absence of any request for assistance emanating from the governing authorities of the counties or municipalities involved. 1963-65 Op. Att'y Gen. p. 38.

Governor may order department members to assist judge in enforcing criminal laws. — Governor is authorized to order the director (now commissioner) of public safety to direct members of the director's (now commissioner's) department to assist a superior court judge, if the orders are designed in any way, either directly or indirectly, to aid the enforcement of the criminal laws within the jurisdiction of the court issuing the orders. 1963-65 Op. Att'y Gen. p. 42.

Authority of state patrol members to execute warrants no greater than authority to make an arrest. 1945-47 Op. Att'y Gen. p. 604.

Competent authorities may request or order patrol officers to execute warrants. — If competent municipal authorities, or the sheriff of any county, or a judge of the superior court requests members of the Georgia State Patrol to execute a warrant, or if by the terms of a warrant they order such members to execute the warrant, the patrol officers are perfectly competent to execute such warrants. 1945-47 Op. Att'y Gen. p. 604.

Warrant resulting from criminal contempt, misdemeanor, or nonobeying witness. — Any warrant issued by the court itself resulting from a case of criminal contempt, or a misdemeanor case proceeding upon an accusation, or to bring in a witness who has not obeyed a subpoena issued in a criminal case, could properly be served by members of the Department of Public Safety. 1963-65 Op. Att'y Gen. p. 42.

Assistance not rendered in noncriminal matters. — This section does not contemplate the rendering of assistance in matters such as the service of process or civil writs which have no connection with criminal enforcement. 1963-65 Op. Att'y Gen. p. 42 (see O.C.G.A. § 35-2-33).

Authority of trooper in another state. — Member of the Uniform Division on official department business in another

state has such law enforcement authority while there as the law of that state may confer upon the member. 1987 Op. Att'y Gen. No. 87-14.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur.2d, Administrative Law, § 52 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 42 et seq.

ALR. — Validity of statute or ordinance against picketing, 122 ALR 1043; 125 ALR 963; 130 ALR 1303.

35-2-34. Composition of headquarters staff.

The headquarters staff shall be composed of the commissioner, deputy commissioner, and such other commissioned and noncommissioned officers, troopers, and clerical personnel as the commissioner deems necessary for use at headquarters. (Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1946, p. 39, § 1; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, § 3; Ga. L. 1960, p. 132, § 1; Ga. L. 1975, p. 1115, § 1; Ga. L. 1977, p. 228, § 1.)

Cross references. — Composition of the battalion, § 35-2-36.

OPINIONS OF THE ATTORNEY GENERAL

Commissioner may create other commissioned officer positions for headquarters staff in addition to positions specifically required by this section as the commissioner deems necessary. 1977 Op. Att'y Gen. No. 77-49 (see O.C.G.A. § 35-2-34).

35-2-35. Performance of clerical duties by headquarters staff; transfer of members of headquarters staff by commissioner.

The clerical duties at headquarters shall be performed by the headquarters staff. The commissioner, in his discretion, may transfer any member of the headquarters staff to any other division or district for any other duty. (Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1946, p. 39, § 1; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, § 3; Ga. L. 1960, p. 132, § 1; Ga. L. 1975, p. 1115, § 1; Ga. L. 1977, p. 228, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 48 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 42 et seq.

35-2-36. Composition of battalion; rank of battalion personnel; employment of recruits or cadets by commissioner; promulgation of rules and regulations as to enlistment and training of recruits or cadets.

(a) The battalion of the Uniform Division shall consist of such personnel as the commissioner, with the approval of the board, may deem necessary within the limits set by available appropriations.

(b) The personnel of the battalion shall be ranked according to a semimilitary structure with such ranks as the board shall deem appropriate, including, but not restricted to, the following:

(1) Major;

(2) Captain;

(3) First lieutenant;

(4) Sergeant first class;

(5) Sergeant;

(6) Corporal;

(7) Trooper first class;

(8) Trooper;

(9) Trooper cadets; and

(10) Process servers.

(c) Within the limits set by available appropriations, the commissioner, with the approval of the board, is authorized to employ such recruits or cadets as may be deemed necessary, who may become members of the Uniform Division but who shall not be members of the Uniform Division so long as they remain recruits or cadets; provided, however, that such recruits or cadets are designated as "peace officers" as such term is defined in paragraph (11) of Code Section 16-1-3 and shall have the authority of a peace officer.

(d) The commissioner shall prescribe rules and regulations governing the enlistment and training of recruits or cadets subject to the approval of the board. (Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1939, p. 135, § 2; Ga. L. 1946, p. 39, § 2; Ga. L. 1947, p. 1159, § 2; Ga. L. 1949, p. 70, § 4; Ga. L. 1951, p. 635, §§ 1, 1A; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, §§ 3, 4; Ga. L. 1960, p. 132, § 1; Ga. L. 1965, p. 125, § 1; Ga. L. 1967, p. 84, § 1; Ga. L. 1969, p. 147, § 1; Ga. L. 1970, p. 117, § 1; Ga. L. 1971, p. 306, § 1; Ga. L. 1971, p. 309, § 1; Ga. L. 1972, p. 354, § 2; Ga. L. 1973, p. 449, §§ 1, 2; Ga. L. 1974, p. 1007, § 1; Ga. L. 1974,

p. 1122, § 1; Ga. L. 1975, p. 1115, § 1; Ga. L. 1977, p. 228, § 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1986, p. 452, § 1; Ga. L. 1988, p. 312, § 1; Ga. L. 1992, p. 3131, § 2.)

35-2-36.1. Auxiliary Service of the Uniform Division; appointment of members; salary; authority and powers; equipment; eligibility.

(a) There is created within the Uniform Division, a special service known as the Auxiliary Service. The members of the Auxiliary Service of the Uniform Division shall be appointed by the commissioner on a part-time basis and shall serve at the pleasure of the commissioner. The members shall have such rank as assigned by the commissioner. The members of the Auxiliary Service shall be paid on an hourly basis and, with the exception of workers' compensation medical coverage and any benefits mandated by federal law, shall not be entitled to any employee benefits based on their employment in the Auxiliary Service.

(b) Members of the Auxiliary Service shall have the same authority and powers as other members of the Uniform Division.

(c) The commissioner is authorized to furnish the members of the Auxiliary Service with such equipment, uniforms, and badges as the commissioner deems necessary for the duties of such members.

(d) No person shall be eligible for appointment in the Auxiliary Service unless that person has, prior to such appointment, successfully completed trooper school, served in the Uniform Division, and voluntarily left the Uniform Division in good standing through retirement, resignation, or otherwise. Persons appointed to the Auxiliary Service must complete the annual training required under Code Section 35-8-21 for certified law enforcement officers, provided that such persons may serve up to six months without having such training. The Department of Public Safety is authorized to provide or to pay for such training in the same fashion that it provides or pays for such training for members of the Uniform Division. (Code 1981, § 35-2-36.1, enacted by Ga. L. 1996, p. 1507, § 2.)

35-2-37. Employment of communications officers to support battalion generally.

To support the battalion, the commissioner, with the approval of the board, is authorized to employ such communications officers as may be necessary, within the limits set by available appropriations. Such personnel shall not be considered members of the Uniform Division. Communications officers may be divided into such ranks or categories as the commissioner, with the approval of the board, deems appropri-

ate. (Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1939, p. 135, § 2; Ga. L. 1946, p. 39, § 2; Ga. L. 1947, p. 1159, § 2; Ga. L. 1949, p. 70, § 4; Ga. L. 1951, p. 635, §§ 1, 1A; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, §§ 3, 4; Ga. L. 1960, p. 132, § 1; Ga. L. 1965, p. 125, § 1; Ga. L. 1967, p. 84, § 1; Ga. L. 1969, p. 147, § 1; Ga. L. 1970, p. 117, § 1; Ga. L. 1971, p. 306, § 1; Ga. L. 1971, p. 309, § 1; Ga. L. 1972, p. 354, § 2; Ga. L. 1973, p. 449, §§ 1, 2; Ga. L. 1974, p. 1007, § 1; Ga. L. 1974, p. 1122, § 1; Ga. L. 1975, p. 1115, § 1; Ga. L. 1977, p. 228, § 2; Ga. L. 2000, p. 951, § 12-4.)

RESEARCH REFERENCES

C.J.S. — 63 C.J.S., Municipal Corporations, § 650 et seq. 67 C.J.S., Officers and Public Employees, § 122 et seq.

35-2-38. Division of state into districts or divisions by commissioner.

The commissioner, with the approval of the board, is authorized to divide the state into districts or divisions as may be necessary for the purpose of effectually patrolling the public roads and highways of the state and of the counties thereof and for combating, detecting, and preventing crime. (Ga. L. 1937, p. 322, art. 2, § 11; Ga. L. 1946, p. 39, § 3.)

35-2-39. Provision of barracks and quarters for officers and troopers of Uniform Division.

The commissioner is authorized, with the approval of the board, to provide comfortable barracks and quarters for the officers and troopers of the Uniform Division. (Ga. L. 1937, p. 322, art. 2, § 11; Ga. L. 1946, p. 39, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Per diem received in addition to expenses when on duty away from district or division. — Officers and troopers should receive a per diem allowance in addition to the officers' actual expenses for meals and lodging when on duty away from the district or division to which the officers are assigned. 1948-49 Op. Att'y Gen. p. 396.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 5, 230 et seq., 241, 252, 255, 257. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 44.

C.J.S. — 63 C.J.S., Municipal Corporations, § 634 et seq. 67 C.J.S., Officers and Public Employees, §§ 224 et seq., 234 et seq., 277 et seq.

35-2-40. Purchase, lease, or construction of barracks and equipment for districts or divisions; acceptance of property, equipment, or services.

In the event any district or division headquarters is established by the commissioner, he shall be authorized, with the approval of the board, to purchase, lease, or construct proper quarters or barracks for the men and equipment at such district or division, and to this end may contract with municipalities, persons, or corporations in the name of the state. Subject to the provisions of Code Section 50-16-38 and Code Section 35-2-41.1, the board is authorized to accept in the name and on behalf of the state any property, equipment, or service that may be donated for use at headquarters or any division or district thereof which may be of value to any division of the department. (Ga. L. 1937, p. 322, art. 2, § 12; Ga. L. 1985, p. 486, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, in the second sentence "35-2-41.1" was substituted for "35-2-40.1".

OPINIONS OF THE ATTORNEY GENERAL

Department (now board) may accept private foundation funds designated for specified projects subject to the following limitations: (1) the gift must be accepted in the name of and in the behalf of the State of Georgia; (2) any conditional gift must not require the department (now board) to exceed the department's powers; and (3) all gifts of money must be held in accordance with the statutes (see O.C.G.A. Art. 3, Ch. 17, T. 50), relating to the deposit of money in state depositories. 1974 Op. Att'y Gen. No. 74-140.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 230 et seq., 241, 252, 255, 257.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 224 et seq., 234 et seq.

35-2-41. Municipality and county purchase or conveyance of property for use as division or district headquarters; effect if property has reversionary clause; approval of contracts.

Subject to the provisions of Code Section 35-2-41.1, any municipality or county of this state is authorized to purchase and convey property by deed, gift, rent, or lease for the use of the department for division or district headquarters. If the deed from the municipality or county to the property to be used for such headquarters contains a reversionary clause to the effect that the property shall revert to the municipality or county in the event it ceases to be used for the headquarters, the commissioner shall not be authorized to enter into any contract or agreement relative to the construction of quarters, barracks, or other

facilities for such headquarters which shall, in any manner whatsoever, obligate the department to pay for more than one-half the costs of construction of the quarters, barracks, or other facilities. Any such contract or agreement must be approved by the board. (Ga. L. 1937, p. 322, art. 2, § 12; Ga. L. 1964, p. 144, § 1; Ga. L. 1985, p. 486, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 485 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 1143, 1150.

35-2-41.1. Donation or conveyance of property, equipment, or services to the department; procedure.

(a) Any offer to donate or convey by deed, gift, rent, lease, or other means any property, equipment, or services to the department shall be made in writing through command channels to the commissioner. If the commissioner approves the offer, he or she shall submit a written proposal of the offer to the board for its approval. A copy of the formal proposal shall be forwarded by the commissioner to the Office of Planning and Budget, the Senate Budget Office, and the House Budget Office, any of which may comment on the proposal.

(b) Title to real property shall be in the State of Georgia for the use of the Department of Public Safety. No member of the department shall be authorized to accept any donation or conveyance of property, equipment, or services unless the provisions of this Code section have been complied with and until the board has approved the donation or conveyance. (Code 1981, § 35-2-41.1, enacted by Ga. L. 1985, p. 486, § 3; Ga. L. 2008, p. VO1, § 1-16/HB 529.)

Editor's notes. — Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

35-2-42. Compensation of members of Uniform Division, communications officers, recruits, and cadets; subsistence and per diem allowances; receipt of badge and duty weapon upon retirement; incentive pay.

(a) All members of the Uniform Division, all communications officers, and all recruits or cadets shall be governed by rules and regulations as now or hereafter established under Chapter 20 of Title 45.

(b) The board shall be authorized to provide for a subsistence and per diem allowance for commissioned officers, noncommissioned officers, and troopers of the Uniform Division.

(c) The board shall be authorized to pay to sworn members of the Department of Public Safety additional compensation to be paid upon retirement in the form of the badge and the duty weapon issued by the department to such member.

(d) The board shall be authorized to grant incentive pay to those members of the Uniform Division of the Department of Public Safety and those members of the Georgia Bureau of Investigation who have obtained degrees or certificates from an accredited member of the Federation of Regional Accrediting Commissions of Higher Education or who have obtained a degree or certificate of completion from some other educational institution with respect to a course of instruction related to law enforcement, so long as both the course of instruction and the institution are specifically approved by the board. Any such incentive pay shall be paid according to the following schedule:

(1) Completion of at least one year of degree-creditable college study consisting of the equivalent of 30 semester hours or 45 quarter hours of education: $200.00 per year;

(2) Obtaining of associate or two-year degree or certificate of completion of 60 semester hours or 90 quarter hours of education: $400.00 per year;

(3) Obtaining of a bachelor's or four-year degree: $800.00 per year.

(e) This Code section is not intended to repeal existing law concerning the following:

(1) The authority of the board to pay certain medical expenses incurred by any member of the Georgia State Patrol or the Georgia Bureau of Investigation;

(2) The authority of the commissioner to provide uniforms and supplies to members of the Uniform Division;

(3) The requirement that board and quarters be furnished to every member of the Uniform Division on active duty; or

(4) The authorization for officers and troopers to receive a legal award offered for the apprehension of any criminal. (Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1939, p. 135, § 2; Ga. L. 1946, p. 39, § 2; Ga. L. 1947, p. 1159, § 2; Ga. L. 1949, p. 70, § 4; Ga. L. 1951, p. 635, §§ 1, 1A; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, §§ 3, 4; Ga. L. 1960, p. 132, § 1; Ga. L. 1965, p. 125, § 1; Ga. L. 1967, p. 84, § 1; Ga. L. 1969, p. 147, § 1; Ga. L. 1970, p. 117, § 1; Ga. L. 1971, p. 306, § 1; Ga. L. 1971, p. 309, § 1; Ga. L. 1972, p. 354, § 2; Ga. L. 1973, p. 449, §§ 1, 2; Ga. L. 1974, p. 1007, § 1; Ga. L. 1974, p. 1122, § 1; Ga. L. 1975, p. 1115, §§ 1, 2; Ga. L. 1977, p. 228, § 2; Ga. L. 1982, p. 3, § 35;

Ga. L. 1987, p. 3, § 35; Ga. L. 1992, p. 3131, § 3; Ga. L. 2000, p. 951, § 12-5; Ga. L. 2006, p. 1050, § 1/SB 520.)

OPINIONS OF THE ATTORNEY GENERAL

State merit system not authorized to grant investigators salary different from salary set by law. — State Merit System of Personnel Administration does not have the authority to grant investigators in the Division of Investigation (now Georgia Bureau of Investigation) a salary different from the salary set by law. 1973 Op. Att'y Gen. No. 73-123.

Compensation increases subject to longevity pay increases. — Compensation increases for members of the Department of Public Safety and the Georgia Bureau of Investigation are subject to longevity pay increases. 1971 Op. Att'y Gen. No. 71-96.

Deputy commissioner entitled to same longevity increases as battalion members. — Deputy director (now deputy commissioner) of public safety is entitled to the same longevity increases as are members of the battalion. 1967 Op. Att'y Gen. No. 67-134.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 271 et seq., 436 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 40 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 634 et seq. 67 C.J.S., Officers and Public Employees, § 270 et seq.

35-2-43. Eligibility for appointment to or enlistment in Uniform Division; appointment or reappointment of discharged members of National Guard, armed forces of the United States, and law enforcement agencies.

Reserved. Repealed by Ga. L. 1998, p. 852, § 1, effective April 10, 1998.

Editor's notes. — This Code section was based on Ga. L. 1937, p. 322, art. 2, § 3; Ga. L. 1945, p. 117, § 1; Ga. L. 1949, p. 70, § 5; Ga. L. 1976, p. 524, § 1; Ga. L. 1984, p. 895, § 1; Ga. L. 1990, p. 283, § 1; Ga. L. 1991, p. 1375, § 1; Ga. L. 1996, p. 271, § 2.

35-2-44. Enlistment, examination, preliminary training, subsequent instruction, and rules and regulations for discipline and conduct of recruits and troopers of Uniform Division.

It shall be the duty of the commissioner, subject to the laws of this state, to arrange for the enlistment and examination of applicants for service as troopers or officers of the Uniform Division of the Department of Public Safety, to provide the necessary preliminary training and subsequent instruction of troopers and recruits as peace officers of this state, and to make all necessary rules and regulations for the discipline, conduct, and control of all officers, troopers, and other employees of the department. (Ga. L. 1937, p. 322, art. 2, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 12 et seq.
C.J.S. — 63 C.J.S., Municipal Corporations, § 628 et seq. 67 C.J.S., Officers and Public Employees, § 22.

35-2-45. Promotions of personnel in Uniform Division.

(a) Any trooper first class of the Uniform Division of the Department of Public Safety shall be eligible for promotion to the rank of corporal, provided he has served a period of 12 months in the Georgia State Patrol including the period of probation.

(b) Any noncommissioned or commissioned officer shall be eligible for promotion to a higher rank, provided he has served at least one year in the preceding rank.

(c) Promotions to ranks of corporal through lieutenant shall be made in accordance with the Georgia State Patrol Promotion System. (Ga. L. 1937, p. 322, art. 2, § 4; Ga. L. 1939, p. 135, § 4; Ga. L. 1949, p. 70, § 6; Ga. L. 1975, p. 1115, § 2; Ga. L. 1987, p. 3, § 35; Ga. L. 1992, p. 3131, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70 et seq. 70 Am. Jur. 2d, Sheriffs, Police and Constables, §§ 7 et seq., 40 et seq.
C.J.S. — 63 C.J.S., Municipal Corporations, § 650 et seq. 67 C.J.S., Officers and Public Employees, § 122 et seq.

35-2-46. Dismissal of officers, troopers, and communications officers.

All officers, troopers, and communications officers who are in the classified service as defined by Code Section 45-20-2 may be dismissed from their employment with the department only in accordance with Chapter 20 of Title 45 and the rules and regulations promulgated thereunder. (Ga. L. 1937, p. 322, art. 2, § 5; Ga. L. 1949, p. 70, § 7; Ga. L. 1976, p. 465, § 1; Ga. L. 1992, p. 3131, § 5; Ga. L. 1997, p. 880, § 1; Ga. L. 2000, p. 951, § 12-6; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-47/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "as defined by Code Section 45-20-2" for "of the State Personnel Administration" near the middle of this Code section.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not

codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in Nix v. Hardison, 712 F. Supp. 185 (N.D. Ga. 1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, §§ 7 et seq., 18 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 663 et seq. 67 C.J.S., Officers and Public Employees, §§ 151, 152, 164.

ALR. — Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 ALR4th 614.

35-2-47. Suspension pending dismissal.

All officers, troopers, and communications officers who are in the classified service as defined by Code Section 45-20-2 may be suspended pending their dismissal from employment with the department as provided in Chapter 20 of Title 45 or the rules and regulations promulgated thereunder. (Ga. L. 1937, p. 322, art. 2, § 5; Ga. L. 1949, p. 70, § 7; Ga. L. 1976, p. 465, § 1; Ga. L. 1992, p. 3131, § 6; Ga. L. 1997, p. 880, § 2; Ga. L. 2000, p. 951, § 12-6; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-48/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "as defined by Code Section 45-20-2" for "of the State Personnel Administration" in this Code section.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

OPINIONS OF THE ATTORNEY GENERAL

Member may be suspended without prior hearing. — Any officer or trooper is entitled to a hearing before discharge, but the officer or trooper may be suspended without hearing, provided that a hearing is to be held within 60 days after the suspension. 1948-49 Op. Att'y Gen. p. 714.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 79. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 22 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 110. 63 C.J.S., Municipal Corporations, §§ 608 et seq., 663 et seq., 745, 749. 67 C.J.S., Officers and Public Employees, §§ 141, 151 et seq., 164.

ALR. — Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 ALR4th 614.

35-2-48. State Patrol Disciplinary Board; composition; appointment and terms of members; conduct of hearings by board; recommendation to commissioner; finality of commissioner's decision.

Reserved. Repealed by Ga. L. 1992, p. 3131, § 7, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1937, p. 322, art. 2, § 5; Ga. L. 1949, p. 70, § 7; Ga. L. 1976, p. 465, § 1; Ga. L. 1981 Ex. Sess., p. 8; Ga. L. 1982, p. 3, § 35; Ga. L. 1986, p. 193, § 1; Ga. L. 1987, p. 3, § 35; Ga. L. 1991, p. 1375, § 2 and Ga. L. 1992, p. 6, § 35.

Ga. L. 2000, p. 951, § 12-6, reserved this Code section.

35-2-49. Provision of uniforms and equipment to sworn members of the Department of Public Safety and radio operators; retention of weapons and badges upon retirement.

The commissioner shall, within the limit of the appropriation, provide the sworn members of the Department of Public Safety with proper uniforms, suitable to the season, and also with emergency and first-aid outfits, weapons, motor vehicles with radio equipment, and all other necessary supplies and equipment for the purpose of carrying out this article, the same to remain the property of the state; provided, however, that after a sworn member has accumulated 15 years of service with the Department of Public Safety, including prior service with the Department of Driver Services (formerly known as the Department of Motor Vehicle Safety), Public Service Commission, Department of Transportation, or Georgia Building Authority, upon leaving the department under honorable conditions, or upon leaving the department as a result of a disability arising in the line of duty regardless of the number of years of service, such member shall be entitled, as part of his or her compensation, to retain his or her weapon and badge pursuant to regulations promulgated by the commissioner. The commissioner shall also, within the limit of the appropriation, provide proper uniforms and equipment to radio operators. After a radio operator has accumulated 15 years of service with the department, including prior service with the Department of Driver Services (formerly known as the Department of Motor Vehicle Safety), Public Service Commission, Department of Transportation, or Georgia Building Authority, upon leaving the department under honorable conditions, such radio operator shall be entitled, as part of his or her compensation, to retain his or her badge pursuant

to regulations promulgated by the commissioner. (Ga. L. 1937, p. 322, art. 2, § 9; Ga. L. 1949, p. 70, § 8; Ga. L. 1975, p. 1175, § 7; Ga. L. 1979, p. 1072, § 1; Ga. L. 1996, p. 271, § 3; Ga. L. 2000, p. 951, § 12-6; Ga. L. 2006, p. 1050, § 2/SB 520; Ga. L. 2012, p. 775, § 35/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "Department of Driver Services (formerly known as the Department of Motor Vehicle Safety), Public Service Commission, Department of Transportation" for "Department of Motor Vehicle Safety, Georgia Public Service Commission, Georgia Department of Transportation", and substituted "Department of Driver Services (formerly known as the Department of Motor Vehicle Safety), Public Service Commission, Department of Transportation" for "Georgia Department of Motor Vehicle Safety, Georgia Public Service Commission, Georgia Department of Transportation" in this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Commissioner cannot authorize cadets to carry firearms. — Trooper cadets are not members of the Uniform Division of the Department of Public Safety, and the commissioner has no authority to authorize the cadets to carry firearms in the performance of the cadets' duty. 1974 Op. Att'y Gen. No. 74-135.

35-2-49.1. Retention of badge and weapon by disabled law enforcement officer.

(a) As used in this Code section, the term "disability" means a disability that prevents an individual from working as a law enforcement officer.

(b) When a member of the Uniform Division of the Department of Public Safety leaves the Uniform Division as a result of a disability arising in the line of duty, such member of the Uniform Division shall be entitled as part of such officer's compensation to retain his or her weapon and badge in accordance with regulations promulgated by the commissioner. (Code 1981, § 35-2-49.1, enacted by Ga. L. 2004, p. 1058, § 3; Ga. L. 2005, p. 60, § 35/HB 95.)

35-2-50. Purchasing of uniforms, supplies, and equipment.

(a) The uniforms, supplies, and equipment authorized by Code Section 35-2-49 shall be purchased by the Department of Administrative Services, with the consent and approval of the Department of Public Safety, by bid let to the lowest and best bidder and in accordance with specifications named in the advertisement of bid.

(b) The advertisement of the letting of contracts for the purchase of uniforms, supplies, or equipment shall be published in at least two issues of some public journal of the state published daily and having a state-wide circulation for not less than 15 days before the time bids for the contracts are opened. The Department of Administrative Services

shall have the right to reject any and all bids. (Ga. L. 1937, p. 322, art. 2, § 9; Ga. L. 1949, p. 70, § 8; Ga. L. 1979, p. 1072, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 22, 32, 43, 44, 57.

35-2-51. Storeroom for excess clothing, equipment, and other articles; disposition of old and worn equipment.

(a) The commissioner shall provide a storeroom or rooms where all excess supplies of clothing, equipment, and other articles shall be stored and shall insure the same against loss by fire.

(b) All old and worn equipment must be delivered to the custodian or custodians of such storeroom or rooms, who need not be members of the Uniform Division of the Department of Public Safety nor subject to age limitations, to be properly receipted before new equipment shall be issued. (Ga. L. 1937, p. 322, art. 2, § 9; Ga. L. 1949, p. 70, § 8.)

35-2-52. Clothing allowance for members of Uniform Division assigned permanently to personal security or special duty assignments.

The commissioner, at his discretion and subject to available funds, shall be authorized to pay to members of the Uniform Division a clothing allowance when the members are permanently assigned to personal security or special duty assignments which necessitate those members wearing clothing other than the uniform of the Uniform Division. The commissioner, subject to the approval of the Board of Public Safety, shall establish the amount of clothing allowance to be paid each year. (Ga. L. 1937, p. 322, art. 2, § 9; Ga. L. 1949, p. 70, § 8; Ga. L. 1975, p. 1175, § 7; Ga. L. 1979, p. 1072, § 1; Ga. L. 1986, p. 452, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 5. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 44 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 634 et seq. 67 C.J.S., Officers and Public Employees, § 279 et seq.

35-2-53. Members of Uniform Division to receive no costs or emoluments; exception for rewards; payment and distribution of fines and costs.

No member of the Uniform Division of the Department of Public Safety shall receive any costs, emoluments, or other compensation other than his salary and any additional compensation provided by or through federal funding to which he may be entitled, except a legal reward as otherwise stated in this article. All fines and costs shall be paid into the treasury of the tribunal having jurisdiction of the offense and distributed according to law. (Ga. L. 1937, p. 322, art. 2, §§ 6, 15; Ga. L. 1973, p. 449, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

State patrol officer is not entitled to fees for performance of duties in criminal cases of whatever type the cases may be. 1948-49 Op. Att'y Gen. p. 49.

Participation in federal drug abuse program not prohibited "office". — When additional compensation will be part of the salary of a member of the Uniform Division of the Department of Public Safety for additional work done for a federal drug abuse program, participation in such a program would not be an "office of profit or trust under the government of the United States" as prohibited by former Code 1933, § 89-101 (see O.C.G.A. § 45-2-1), primarily because participation would not be an "office" within the meaning of that section. 1972 Op. Att'y Gen. No. 72-69.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 5. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 40.

C.J.S. — 63 C.J.S., Municipal Corporations, § 634 et seq. 67 C.J.S., Officers and Public Employees, § 275 et seq.

ALR. — Right of officer to compensation for services in recovering stolen property, 58 ALR 1125.

Construction of statute authorizing public authorities to offer rewards for arrest and conviction of persons guilty of crime, 86 ALR 579.

Knowledge of reward as condition of right thereto, 86 ALR3d 1142.

35-2-54. Purchase of group insurance.

(a) The commissioner, with the approval of the board, is authorized to purchase group life, group accident, and group hospitalization insurance contracts, policies, or certificates issued to the members of the Uniform Division, provided that such contracts of insurance shall be approved by the board as to the amount of insurance, amount of premiums, and company issuing or writing them; provided, further, that the premiums for such contracts, policies, or certificates of insurance shall be paid by the members of the Uniform Division desiring to participate therein; and this purchase shall be in no way considered as incurring a liability on the part of the state to pay for such insurance.

(b) The contracts, policies, or certificates of insurance, as provided for in subsection (a) of this Code section, may be made payable to the beneficiary designated by the member of the Uniform Division to whom the contracts, policies, or certificates are issued. (Ga. L. 1941, p. 277, § 1; Ga. L. 1987, p. 3, § 35.)

Cross references. — Indemnification of law enforcement officers killed or permanently disabled in the line of duty, Ga. Const. 1983, Art. III, Sec. VI, Para. VI. Insuring and indemnification of public officers and employees, T. 45, C. 9. State Employees' Health Insurance Plan, T. 45, C. 18, A. 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 44 Am. Jur. 2d, Insurance, § 1828 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, §§ 40, 41.

C.J.S. — 44 C.J.S., Insurance, § 461 et seq. 63 C.J.S., Municipal Corporations, § 634 et seq. 67 C.J.S., Officers and Public Employees, §§ 270, 271.

35-2-55. Compensatory time off for members of Uniform Division working on state holiday.

The commissioner is authorized and directed to arrange the work schedules of members of the Uniform Division in such a manner that each member shall be given compensatory time off for each day which he is required to work and which is also a legal state holiday. Such compensatory time off shall be given within 90 days of the holiday involved, except where the day of compensatory time off coincides with an emergency situation, in which case the granting of compensatory time off shall be postponed until such time as the emergency no longer exists. (Ga. L. 1970, p. 849.)

35-2-56. Use of motor vehicles or other equipment by members of Uniform Division.

(a) Except as otherwise provided in subsection (b) of this Code section, no department motor vehicles shall be used by any member of the Uniform Division except in discharge of official duties. Any other equipment shall be used only with the express written approval of the commissioner. The commissioner shall adopt rules and regulations governing the use of equipment subject to approval of the Board of Public Safety.

(b)(1) Members of the Uniform Division may use a department motor vehicle while working an approved off-duty job, provided that:

(A) The off-duty employment is of a general nature that is the subject of a contract between the off-duty employer and the Department of Public Safety and is service in which the use of the

department motor vehicle is a benefit to the department or is in furtherance of the department's mission;

(B) The off-duty employer agrees to pay and does pay to the department an amount determined by the commissioner to be sufficient to reimburse the department for the use of the vehicle and to pay the off-duty employee sufficient compensation. Pursuant to such contract, the department shall pay the employee of the department the compensation earned on off-duty employment whenever such employee performs such service in a department motor vehicle; and

(C) The commissioner has specifically approved, in writing, the individual use of the vehicle by the employee.

(2) At no time will an off-duty employee be allowed use of a department motor vehicle at any political function of any kind. (Ga. L. 1937, p. 322, art. 2, § 13; Ga. L. 1952, p. 3, § 1; Ga. L. 1992, p. 1310, § 1; Ga. L. 1999, p. 560, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Authority to allow off-duty troopers to work part-time security jobs in uniform and utilizing state vehicles. — See 1987 Op. Att'y Gen. No. 87-14.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 44 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 634 et seq. 67 C.J.S., Officers and Public Employees, § 279 et seq.

35-2-57. Use of retired unmarked pursuit cars for training.

When an unmarked pursuit vehicle used by the Georgia State Patrol for the purpose of enforcing the traffic laws of this state is first removed from the field and will no longer be used on a regular basis for pursuit purposes, the commissioner of public safety is authorized, in his or her discretion, to make such pursuit vehicle available to the Georgia Public Safety Training Center for the purpose of training public safety officers pursuant to Chapter 5 of this title. Such vehicles may also be sold or traded pursuant to Code Section 35-2-58. Upon notification by the commissioner, the administrator of the Georgia Public Safety Training Center shall be authorized to take immediate possession of any such pursuit vehicle. (Code 1981, § 35-2-57, enacted by Ga. L. 1987, p. 317, § 1; Ga. L. 2012, p. 1, § 1/HB 253.)

The 2012 amendment, effective January 24, 2012, in this Code section, substituted "public safety is authorized, in his or her discretion, to make such pursuit vehicle available to the Georgia Public Safety Training Center" for "public safety shall notify the administrator of the Georgia Public Safety Training Center and shall

make such pursuit vehicle available to such center" in the first sentence, and added the second sentence.

Cross references. — Georgia Public Safety Training Center, T. 35, C. 5.

Editor's notes. — Ga. L. 1986, p. 1059, § 3, effective April 7, 1986, repealed the Code section formerly codified as Code Section 35-2-57. The former Code section was based on Ga. L. 1937, p. 322, art. 2, § 1 and Ga. L. 1960, p. 247, § 1. For current provisions regarding falsely holding oneself out to be a peace officer or other public officer or employee, see Code Section 16-10-23.

OPINIONS OF THE ATTORNEY GENERAL

Authority to allow off-duty troopers to work part-time security jobs in uniform and utilizing state vehicles. — See 1987 Op. Att'y Gen. No. 87-14.

35-2-58. Approval by board to sell or trade surplus motor vehicles towards purchase of new motor vehicles.

(a) Any other provision of law notwithstanding, the commissioner, subject to approval by the board, shall have the power to sell or trade surplus motor vehicles no longer needed by the department and use the proceeds from the sale or trade toward the purchase of new motor vehicles by the department.

(b) Subject to approval by the board, available funds, and Article 3 of Chapter 5 of Title 50, the commissioner is authorized, in his or her discretion, to purchase new motor vehicles for use by the department.

(c) The board shall promulgate rules and regulations to implement the provisions of this Code section. The disposition of motor vehicles by the department shall not be subject to Article 4 of Chapter 5 of Title 50 or subject to the procedures or approval of any other state agency. (Code 1981, § 35-2-58, enacted by Ga. L. 2012, p. 1, § 2/HB 253.)

Effective date. — This Code section became effective January 24, 2012.

ARTICLE 3

SECURITY GUARD DIVISION

Cross references. — Employment of security guards to protect property of Georgia Building Authority, § 50-9-9.

35-2-70. Establishment.

The commissioner is authorized, with the approval of the board, to establish a Security Guard Division within the department. (Ga. L. 1968, p. 475, § 1.)

35-2-71. Powers and duties of security guards.

(a) While in the performance of their duties, such security guards shall have the same powers of arrest and the same powers to enforce law and order as the sheriff of the county and the chief of police of the municipality in this state in which any such security guards are performing their duties.

(b) While in the performance of their duties, such security guards shall also be authorized to exercise such powers and duties as are authorized by law for members of the Uniform Division of the department. (Ga. L. 1968, p. 475, § 4; Ga. L. 1987, p. 3, § 35.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 3. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 30 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 632 et seq.

35-2-72. Compensation, uniforms, and equipment of security guards.

All persons employed as security guards shall be compensated in an amount to be prescribed by the commissioner and shall be furnished with and shall wear such distinctive uniforms and equipment as may be prescribed by the commissioner. (Ga. L. 1968, p. 475, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 271 et seq., 284 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 40 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 634 et seq. 67 C.J.S., Officers and Public Employees, § 270 et seq.

35-2-73. Security guards for protection of Governor, Lieutenant Governor, Speaker of the House, and their families and executive department; transportation of family members at state expense.

(a) The commissioner shall be authorized to employ such number of security guards as may be necessary to keep watch over and protect the Governor and members of his immediate family, the Lieutenant Governor and members of his immediate family, the Speaker of the House of Representatives and members of his immediate family, the executive department at the state capitol or at any other place as the executive department may be moved, the executive center or other residence of the Governor, the residences and offices of the Lieutenant Governor and

the Speaker of the House of Representatives, and such other state property and individuals as may be directed by the Governor.

(b) Members of the Governor's family, the Lieutenant Governor's family, and the Speaker's family for whom protection is provided by the Security Guard Division, when traveling with the Governor, the Lieutenant Governor, or the Speaker, as the case may be, when traveling on state related business at the request of the Governor, the Lieutenant Governor, or the Speaker, as the case may be, or when in the judgment of the commissioner security considerations so dictate, may be transported by means of state owned transportation facilities, when appropriate, or at state expense by private carrier, when the use of such state owned facilities are not practical or appropriate. (Ga. L. 1968, p. 475, § 1; Ga. L. 1979, p. 143, § 2; Ga. L. 1981, p. 684, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35; Ga. L. 1992, p. 6, § 35.)

OPINIONS OF THE ATTORNEY GENERAL

Governor's security guards are, in effect, the Governor's body guards, and it is the guards' duty to provide security for the Governor. 1972 Op. Att'y Gen. No. 72-144.

Expenses of Governor's security guards chargeable to state. — Expenses incurred by the state troopers who travel within and without the state with the Governor as security guards are properly chargeable to the state. 1972 Op. Att'y Gen. No. 72-144.

Use of state-owned aircraft. — If the Governor, Lieutenant Governor, or Speaker of the House must travel on personal or political business, such travel must be accomplished by private means unless the commissioner of public safety has determined that travel on state aircraft is necessary for personal security; otherwise, when any public officer uses a state aircraft for a personal or political reason, the use of the aircraft is contrary to the prohibitions of the gratuities clause and state statutes authorizing the use of state aircraft, even if the official to reimburse the state for the direct costs associated with the trip. 2004 Op. Att'y Gen. No. 2004-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 230, 231, 241. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 30 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 640 et seq., 655.

35-2-74. Governor to prescribe coverage by State Personnel Board.

(a) The Governor is authorized, in his discretion, to direct by executive order that the employees of the Security Guard Division shall be covered by the rules of the State Personnel Board and in such order shall specify the date on which the rules shall become applicable to such personnel.

(b) The application of the rules of the State Personnel Board to employees of the Security Guard Division shall not affect any other personnel of the Department of Public Safety. (Ga. L. 1968, p. 475, § 6; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-49/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "rules of the State Personnel Board" for "State Personnel Administration" in subsections (a) and (b); and substituted "rules" for "system" in subsection (a).

Cross references. — State Personnel Board generally, § 45-20-1 et seq.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, § 14.

C.J.S. — 62 C.J.S., Municipal Corporations, § 573 et seq. 67 C.J.S., Officers and Public Employees, § 63.

35-2-75. Adoption of rules, regulations, and orders by board.

The board shall be authorized to promulgate and adopt such rules, regulations, and orders in regard to security guards as in its judgment public service may demand. (Ga. L. 1968, p. 475, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 230, 231, 241.

C.J.S. — 62 C.J.S., Municipal Corporations, § 457 et seq. 67 C.J.S., Officers and Public Employees, §§ 224, 225. 73 C.J.S., Public Administrative Law and Procedure, § 68 et seq.

ARTICLE 4

DEPARTMENT OF PUBLIC SAFETY NOMENCLATURE

Editor's notes. — Ga. L. 1995, p. 925, § 1, not codified by the General Assembly, provides: "(a) It is declared to be contrary to the health, safety, and public welfare of the people of this state for any individual or organization to act in a manner which would mislead the public into believing that a member of the public is dealing with the Department of Public Safety, the State Patrol, or with a member thereof when in fact the individual or organization is not the Department of Public Safety, the State Patrol, the state police, nor a member thereof. Furthermore, the Department of Public Safety, which has provided quality law enforcement services to the citizens of this state since 1937, has established a name for excellence in its field. This name should be protected for the department, its members, and the citizens of the state. Therefore, no person or organization should be allowed to use

the department's name or any term used to identify the department or its members without the expressed permission of the chief administrative officer of the department. The provisions of this Act are in furtherance of the promotion of this policy.

"(b) It is declared to be contrary to the health, safety, and public welfare of the people of this state for any individual or organization to act in a manner which would mislead the public into believing that a member of the public is dealing with the Georgia Bureau of Investigation or with an agent thereof when in fact the individual or organization is not the Georgia Bureau of Investigation nor an agent thereof. Furthermore, the Georgia Bureau of Investigation, which has provided quality law enforcement services to the citizens of this state, has established a name for excellence in its field. This name should be protected for the bureau, its agents, and the citizens of this state. Therefore, no person or organization should be allowed to use the bureau's name or any term used to identify the bureau or its agents without the expressed permission of the director of investigation. The provisions of this Act are in furtherance of the promotion of this policy."

35-2-80. Short title.

This article shall be known and may be cited as the "Department of Public Safety Nomenclature Act of 1995." (Code 1981, § 35-2-80, enacted by Ga. L. 1995, p. 925, § 2.)

JUDICIAL DECISIONS

Cited in Local 491 v. Gwinnett County, 510 F. Supp. 2d 1271 (N.D. Ga. 2007).

35-2-81. Definitions.

As used in this article, the term:

(1) "Badge" means any official badge used by members of the Department of Public Safety, either in the past or currently.

(2) "Commissioner" means the commissioner of public safety.

(3) "Department" means the Department of Public Safety.

(4) "Emblem" means any official patch or other emblem worn currently or formerly or used by the department to identify the department or its employees.

(5) "Person" means any person, corporation, organization, or political subdivision of the State of Georgia.

(6) "Willful violator" means any person who knowingly violates the provisions of this article. Any person who violates this article after being advised in writing by the commissioner that such person's activity is in violation of this article shall be considered a willful violator and shall be considered in willful violation of this article. Any person whose agent or representative is a willful violator and who has knowledge of the violation by the agent or representative shall

also be considered a willful violator and in willful violation of this article unless, upon learning of the violation, he or she immediately terminates the agency or other relationship with such violator. (Code 1981, § 35-2-81, enacted by Ga. L. 1995, p. 925, § 2.)

35-2-82. Permission required for use of department nomenclature.

Whoever, except with the written permission of the commissioner, knowingly uses the words "Georgia Department of Public Safety," "State Patrol," "State Police," "State Highway Patrol," "State Trooper," or "State Patrolman" in connection with any advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production is approved, endorsed, or authorized by or associated with the department shall be in violation of this article. (Code 1981, § 35-2-82, enacted by Ga. L. 1995, p. 925, § 2.)

35-2-83. Permission required for use of department symbols.

Any person who uses or displays any symbol, including any emblem, seal, or badge, current or historical, used by the department without written permission from the commissioner shall be in violation of this article. (Code 1981, § 35-2-83, enacted by Ga. L. 1995, p. 925, § 2.)

35-2-84. Procedure for seeking permission to use department nomenclature or symbols.

Any person wishing permission to use either department nomenclature or symbols may request such permission in writing to the commissioner. The commissioner shall serve notice on the requesting party within 15 calendar days after receipt of the request of his or her decision on whether the person may use the nomenclature or the symbol. If the commissioner does not respond within the 15 day time period, then the request is presumed to have been denied. The grant of permission under Code Section 35-2-82 or 35-2-83 shall be in the discretion of the commissioner under such conditions as the commissioner may impose. If the commissioner denies such request and the person making such request reasonably believes that the commissioner has acted in bad faith or based on an illegal motive, then the person may, within 15 days after the person's request was denied or granted on limited terms, file an appeal with the Board of Public Safety. The matter will then be considered before the board, but the burden will be with the person making the request to show that the request was

improperly denied or limited. (Code 1981, § 35-2-84, enacted by Ga. L. 1995, p. 925, § 2.)

35-2-85. Injunctions against violations.

Whenever there shall be an actual or threatened violation of Code Section 35-2-82 or 35-2-83, the commissioner shall have the right to apply to the Superior Court of Fulton County or to the superior court of the county of residence of the violator for an injunction to restrain the violation. (Code 1981, § 35-2-85, enacted by Ga. L. 1995, p. 925, § 2.)

35-2-86. Civil penalties.

In addition to any other relief or sanction for a violation of Code Section 35-2-82 or 35-2-83, where the violation is willful, the commissioner shall be entitled to collect a civil penalty in the amount of $500.00 for each violation. Further, when there is a finding of willful violation, the commissioner shall be entitled to recover reasonable attorney's fees for bringing any action against the violator. The commissioner shall be entitled to seek civil sanctions in the Superior Court of Fulton County or in the county of residence of the violator. (Code 1981, § 35-2-86, enacted by Ga. L. 1995, p. 925, § 2.)

35-2-87. Damage suits against violators.

Any person who has given money or any other item of value to another person due in part to such person's use of department nomenclature or symbols in violation of this article may maintain a suit for damages against the violator. Where it is proven that the violation was willful, the victim shall be entitled to recover treble damages, punitive damages, and reasonable attorney's fees. (Code 1981, § 35-2-87, enacted by Ga. L. 1995, p. 925, § 2.)

35-2-88. Criminal penalties.

Any person who violates the provisions of this article shall be guilty of a felony and upon conviction thereof shall be subject to a fine of not less than $1,000.00 nor more than $5,000.00 or to imprisonment for not less than one and not more than five years, or both. Each violation shall constitute a separate offense. (Code 1981, § 35-2-88, enacted by Ga. L. 1995, p. 925, § 2.)

ARTICLE 5

MOTOR CARRIER COMPLIANCE DIVISION

35-2-100. Creation; members designated as law enforcement officers.

There shall be created and established a division of the Department of Public Safety to be known as the Motor Carrier Compliance Division, and within the division shall be created a section to be known as the Motor Carrier Compliance Enforcement Section. Except as provided in Code Section 35-2-102, the members of the Motor Carrier Compliance Enforcement Section shall be known and designated as "law enforcement officers." (Code 1981, § 35-2-100, enacted by Ga. L. 2005, p. 334, § 13A-2/HB 501; Ga. L. 2009, p. 122, § 1/HB 343; Ga. L. 2012, p. 580, § 7/HB 865.)

The 2012 amendment, effective July 1, 2012, in the first sentence, substituted "shall be" for "is" and added ", and within the division shall be created a section to be known as the Motor Carrier Compliance Enforcement Section" at the end; and substituted "Enforcement Section" for "Division" in the middle of the second sentence.

35-2-101. Jurisdiction; duties and powers; use of dogs to detect controlled substances; off-duty use of department vehicles.

(a) The Motor Carrier Compliance Enforcement Section of the department shall have jurisdiction throughout this state with such duties and powers as are prescribed by law.

(b) The primary duties of the Motor Carrier Compliance Enforcement Section shall be as follows:

(1) Enforcement of laws and regulations relating to the size and the weights of motor vehicles, trailers, and loads as provided for in Article 2 of Chapter 6 of Title 32;

(2) Enforcement of laws and regulations relating to licensing and fuel tax registration requirements and the reporting of violations thereof to the Department of Revenue;

(3) Enforcement of safety standards for motor vehicles and motor vehicle components;

(4) Enforcement of laws relating to hazardous materials carriers;

(5) Enforcement of all state laws on the following properties owned or controlled by the Department of Transportation or the State Road and Tollway Authority: rest areas, truck-weighing stations or checkpoints, wayside parks, parking facilities, toll facilities, and any

buildings and grounds for public equipment and personnel used for or engaged in administration, construction, or maintenance of the public roads or research pertaining thereto;

(6) Enforcement of Code Section 16-10-24, relating to obstructing or hindering law enforcement officers;

(7) Directing and controlling traffic on any public road which is part of the state highway system but only in areas where maintenance and construction activities are being performed and at scenes of accidents and emergencies until local police officers or Georgia State Patrol officers arrive and have the situation under control;

(8) Enforcement of Code Sections 32-9-4 and 40-6-54, relating to designation of restricted travel lanes;

(9) Enforcement of Code Section 16-11-43, relating to obstructing highways, streets, sidewalks, or other public passages, on any public road which is part of the state highway system;

(10) Enforcement of Code Section 16-7-43, relating to littering public or private property or waters, on any public road which is part of the state highway system;

(11) Enforcement of Code Section 16-7-24, relating to interference with government property, on any public road which is part of the state highway system; and

(12) Enforcement of any state law when ordered to do so by the commissioner.

(c) In performance of the duties specified in subsection (b) of this Code section, certified law enforcement officers employed by the department or designated by the commissioner shall:

(1) Be authorized to carry firearms;

(2) Exercise arrest powers;

(3) Have the power to stop, enter upon, and inspect all motor vehicles using the public highways for purposes of determining whether such vehicles have complied with and are complying with laws, the administration or enforcement of which is the responsibility of the department;

(4) Have the power to examine the facilities where motor vehicles are housed or maintained and the books and records of motor carriers for purposes of determining compliance with laws, the administration or enforcement of which is the responsibility of the department; and

(5) Exercise the powers generally authorized for law enforcement officers in the performance of their duties or otherwise to the extent

needed to protect any life or property when the circumstances demand action.

(d) The commissioner shall authorize law enforcement officers of the Motor Carrier Compliance Enforcement Section to make use of dogs trained for the purpose of detection of drugs and controlled substances while such officers are engaged in the performance of their authorized duties. If such authorized use of such a dog indicates probable cause to indicate the presence of contraband, the officer or officers shall in those circumstances have the full authority of peace officers to enforce the provisions of Article 2 of Chapter 13 of Title 16, the "Georgia Controlled Substances Act," and Article 3 of Chapter 13 of Title 16, the "Dangerous Drug Act"; provided, however, that the department must immediately notify the local law enforcement agency and district attorney of the jurisdiction where a seizure is made.

(e)(1) Certified law enforcement officers employed by the Motor Carrier Compliance Enforcement Section may use a department motor vehicle while working an approved off-duty job, provided that:

(A) The off-duty employment is of a general nature that is the subject of a contract between the off-duty employer and the department and is service in which the use of the department motor vehicle is a benefit to the department or is in furtherance of the department's mission;

(B) The off-duty employer agrees to pay and does pay to the department an amount determined by the commissioner to be sufficient to reimburse the department for the use of the vehicle and to pay the off-duty employee sufficient compensation. Pursuant to such contract, the department shall pay the employee of the department the compensation earned on off-duty employment whenever such employee performs such service in a department motor vehicle; and

(C) The commissioner has specifically approved, in writing, the individual use of the vehicle by the employee.

(2) At no time will an off-duty employee be allowed use of a department motor vehicle at any political function of any kind. (Code 1981, § 35-2-101, enacted by Ga. L. 2005, p. 334, § 13A-2/HB 501; Ga. L. 2012, p. 580, § 7/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Motor Carrier Compliance Enforcement Section" for "Motor Carrier Compliance Division" throughout this Code section.

35-2-102. Weight inspector positions; training; powers and responsibilities; limits on responsibilities.

(a) The commissioner is authorized to establish a position to be known as "weight inspector" within the Motor Carrier Compliance Enforcement Section of the Department of Public Safety. Weight inspectors shall be assigned to fixed scales facilities and shall not be authorized to operate outside such facilities. The number of such positions shall be determined by the commissioner within the limits set by available appropriations. Weight inspectors may be divided into such ranks as the commissioner deems appropriate.

(b) The commissioner shall ensure that a weight inspector is properly trained regarding laws governing commercial motor vehicle weight, registration, size, and load, including, but not limited to, commercial motor vehicle provisions in Article 2 of Chapter 6 of Title 32 and safety standards for commercial motor vehicles and such motor vehicle components. The training required in the areas required by this subsection shall be equivalent to training provided to certified officers in the Motor Carrier Compliance Enforcement Section.

(c) A weight inspector, at the fixed scales facility, shall be authorized to:

(1) Enforce noncriminal provisions relating to commercial motor vehicle weight, registration, size, and load and assess a civil penalty for a violation of such provisions; and

(2) Detain a commercial motor vehicle that:

(A) Has a safety defect which is critical to the continued safe operation of the vehicle;

(B) Is being operated in violation of any criminal law; or

(C) Is being operated in violation of an out-of-service order as reported on the federal Safety and Fitness Electronic Records data base.

The detention authorized by this paragraph shall be for the purpose of contacting a certified member of the Motor Carrier Compliance Enforcement Section or Georgia State Patrol. A certified officer shall report to the scene of a detained vehicle and take any further action deemed appropriate including completing the inspection and investigation, making an arrest, or bringing criminal or civil charges.

(d) A weight inspector is not a peace officer and shall not be authorized to carry a firearm or exercise any power of arrest other than a citizen's arrest in accordance with Code Sections 17-4-60 and 17-4-61. At all times while a weight inspector is on duty, there shall be a

supervisor over the weight inspector also on duty who shall be a certified peace officer. (Code 1981, § 35-2-102, enacted by Ga. L. 2009, p. 122, § 2/HB 343; Ga. L. 2012, p. 580, § 7/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Motor Carrier Compliance Enforcement Section" for "Motor Carrier Compliance Division" throughout this Code section.

ARTICLE 6

CAPITOL POLICE DIVISION

Effective date. — This article became effective July 1, 2010.

35-2-120. Definitions.

As used in this article, the term:

(1) "Capitol Square" means that area designated as such by Code Section 50-2-28.

(2) "Commissioner" means the commissioner of public safety.

(3) "Department" means the Department of Public Safety.

(4) "Division" means the Capitol Police Division of the department created by this article. (Code 1981, § 35-2-120, enacted by Ga. L. 2010, p. 137, § 1/HB 1074.)

Cross references. — Appointment of nonuniformed investigators to protect state property, § 35-1-6.

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

35-2-121. Establishment of Capitol Police Division; staffing.

There is created and established a division of the Department of Public Safety to be known as the Capitol Police Division. The department shall staff such division with certified law enforcement officers, who shall be designated capitol police officers, security personnel under the employment of or contract with the department, and any other certified peace officer employed by the department. (Code 1981, § 35-2-121, enacted by Ga. L. 2010, p. 137, § 1/HB 1074.)

35-2-122. Jurisdiction; duties; power.

(a) The division shall have jurisdiction and the primary duty to enforce all laws in Capitol Square and the property and buildings owned by the Georgia Building Authority within a five-mile radius of Capitol Square.

(b) The division shall have the following additional duties:

(1) To maintain peace and order and enforce the laws and regulations relating to controlling access to any building or property under the control or operation of the Georgia Building Authority;

(2) To maintain peace and order and enforce the laws and regulations relating to controlling access to Capitol Square;

(3) To enforce parking and traffic laws and to investigate accidents within Capitol Square;

(4) To enforce state law when ordered to do so by the commissioner; and

(5) To exercise the powers of a law enforcement officer to protect life and property.

(c) In the performance of their duties, certified law enforcement officers shall be authorized to carry firearms and exercise the power of arrest. (Code 1981, § 35-2-122, enacted by Ga. L. 2010, p. 137, § 1/HB 1074.)

35-2-123. Use of vehicles by off-duty law enforcement officer.

(a) Certified law enforcement officers employed by the division shall be authorized to use official vehicles while engaging in approved off-duty employment, provided that:

(1) The off-duty employment is related to a contract between the off-duty employer and the department and is service in which the use of the official vehicle is a benefit to the department or is in furtherance of the department's mission;

(2) The off-duty employer pays to the department an amount determined by the commissioner to be sufficient to reimburse the department for the use of the official vehicle; and

(3) The commissioner has approved, in writing, the individual use of the official vehicle by the law enforcement officer.

(b) At no time shall an off-duty law enforcement officer be allowed the use of an official vehicle at a political function of any kind. (Code 1981, § 35-2-123, enacted by Ga. L. 2010, p. 137, § 1/HB 1074.)

35-2-124. Reimbursement to the department for costs.

The Georgia Building Authority shall reimburse the department for the costs to the department of performing police and security duties within Capitol Square in accordance with an intergovernmental agreement by and between the department and the Georgia Building

Authority. Such agreement shall set forth the amount to be paid by the Georgia Building Authority to the department for each fiscal year and shall be executed prior to the budget submission deadline set by the Governor's Office of Planning and Budget. (Code 1981, § 35-2-124, enacted by Ga. L. 2010, p. 137, § 1/HB 1074.)

ARTICLE 7

STATE AVIATION OPERATIONS

Effective date. — This article became effective May 11, 2011.

35-2-140. Transfer of certain personnel, aircraft, and other assets from the Georgia Aviation Authority to the Department of Public Safety.

(a)(1) On and after September 1, 2011, the Department of Public Safety shall be authorized to acquire, operate, maintain, house, and dispose of all state aviation assets assigned to the department, to provide aviation services and oversight of such state aircraft and aviation operations for public safety and legitimate state business purposes, to achieve policy objectives through aviation missions, and to provide for the efficient operation of such state aircraft.

(2) On September 1, 2011, the Georgia Aviation Authority shall transfer back to the custody and control of the Department of Public Safety all of the aircraft previously transferred to the authority by the Department of Public Safety and any associated parts and equipment; provided, however, that this article shall have no application to aircraft owned or operated by the Department of Defense.

(3) On September 1, 2011, any person who is employed by the Department of Public Safety and is assigned for administrative purposes only to the Georgia Aviation Authority shall be transferred back to the Department of Public Safety and shall no longer be under the administration or direction of the Georgia Aviation Authority. In addition, on September 1, 2011, the six aviation mechanic positions that were previously transferred by the Department of Public Safety to the Georgia Aviation Authority shall be returned to the Department of Public Safety along with the funds budgeted for such positions.

(4) All airfields and appurtenances, including hangars, previously transferred to the Georgia Aviation Authority by the Department of Public Safety and all funds, accounts receivable, a percentage of the budgeted operating funds, contracts, liabilities, and obligations associated with the aircraft being transferred back to the Department of

Public Safety as of September 1, 2011, shall become the property, funds, accounts receivable, budgeted operating funds, contracts, liabilities, and obligations of the Department of Public Safety on such date.

(5) The Department of Public Safety shall be responsible for providing aviation services in support of public safety. The department shall be authorized to dispose of any state aircraft and apply the proceeds derived therefrom to the purchase of replacement aviation assets.

(b) The Department of Public Safety shall have the power to:

(1) Hire, organize, and train personnel to operate, maintain, house, purchase, and dispose of aviation assets;

(2) Purchase, lease, maintain, develop, and modify facilities to support aviation assets and operations;

(3) Develop operating, maintenance, safety, security, training, education, and scheduling standards for state aviation operations and conduct inspections, audits, and other similar oversight to determine practices and compliance with such standards;

(4) Develop an accountability system for state aviation operations and activities;

(5) Identify the costs associated with training, education, and the purchase, operation, maintenance, and administration of state aircraft and aviation operations and related facilities;

(6) In conjunction with the Georgia Aviation Authority, develop an appropriate joint billing structure for passenger transportation where the aircraft is designated and operated as a "civil aircraft" under Part 91 of the Federal Aviation Regulations and charge agencies and other state entities for the full variable hourly costs for the operation of each type aircraft, evaluated annually and adjusted as necessary based upon the price of fuel, maintenance, and other fees that are a direct result of flying the aircraft on that specific trip; provided, however, that any billing to an agency by the department shall be suspended whenever the Governor declares a state of emergency on any cost associated with aircraft used during and in response to such state of emergency;

(7) Retain appropriate external consulting and auditing expertise;

(8) Engage aviation industry representatives to ensure best practices for state aviation assets;

(9) Delegate certain powers pursuant to this article to other state entities;

(10) Otherwise implement appropriate and efficient management practices for state aviation operations; and

(11) Enter into agreements with the Georgia Aviation Authority for mutual use of state airfields and appurtenances, including aircraft hangars. (Code 1981, § 35-2-140, enacted by Ga. L. 2011, p. 409, § 4/HB 414.)

CHAPTER 3

GEORGIA BUREAU OF INVESTIGATION

Article 1

General Provisions

Sec.
35-3-1. Definitions.
35-3-2. Creation.
35-3-3. Divisions of bureau.
35-3-4. Powers and duties of bureau generally.
35-3-4.1. Subpoena for production of electronic communication service records for computer or electronic device used in furtherance of certain offenses against minors.
35-3-4.2. Subpoena authority for investigating fraudulent real estate transactions.
35-3-4.3. Subpoena power for investigations of violations involving trafficking of persons for labor or sexual servitude.
35-3-5. Director — Creation; appointment and removal; powers and duties.
35-3-6. Director — Unclassified service; compensation.
35-3-7. Agreements by director and commissioner for provision of services and material.
35-3-8. Powers of agents of bureau generally.
35-3-8.1. Power of bureau to assist other law enforcement agencies.
35-3-9. Narcotics agents.
35-3-9.1. Special Cocaine Task Force [Repealed].
35-3-9.2. Mobile cocaine education van [Repealed].
35-3-10. Participation by bureau personnel and director in Employees' Retirement System of Georgia.
35-3-11. Applicability of merit system to agents of bureau; retention of badge and weapon by disabled agent.
35-3-12. Payment of medical and similar expenses of members injured in line of duty; procedure.
35-3-13. Requests for investigation of criminal matters and crime related fires; access to local services and records.
35-3-14 through 35-3-16 [Repealed].

Article 2

Georgia Crime Information Center

35-3-30. Definitions.
35-3-31. Establishment of center; staff and equipment generally; State Personnel Board status of personnel.
35-3-32. Establishment of council; composition; duties and responsibilities of council generally.
35-3-33. Powers and duties of center generally.
35-3-34. (For effective date, see note) Disclosure and dissemination of criminal records to private persons and businesses; resulting responsibility and liability of issuing center; provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System.
35-3-34.1. Circumstances when exonerated first offender's criminal record may be disclosed.
35-3-34.2. Exchange of national criminal history background checks on providers of care to children, the elderly, and persons with disabilities.
35-3-35. Disclosure and dissemination of records to public agencies and political subdivisions; responsibility and liability of issuing center.
35-3-35.1. Superseded.
35-3-36. Duties of state criminal justice agencies as to submission of fingerprints, photographs,

Sec.
and other identifying data to center; responsibility for accuracy.
35-3-37. (Effective until July 1, 2013. See note.) Inspection of criminal records; purging, modifying, or supplementing of records.
35-3-37. (Effective July 1, 2013) Review of individual's criminal history record information; definitions; privacy considerations; written application requesting review; inspection.
35-3-38. Unauthorized requests or disclosures of criminal history record information; disclosure of techniques used to ensure security or privacy of criminal history records.
35-3-39. Effect of neglect or refusal of official to act as required by article.
35-3-39.1. National Crime Prevention and Privacy Compact; ratification; criminal history records repository.
35-3-40. Construction of article.

Article 3

Antiterrorism Task Force

35-3-60. Short title.
35-3-61. Legislative findings; purpose; liberal construction.
35-3-62. "Terroristic act" defined.
35-3-63. Creation of task force; purposes.
35-3-64. Confidentiality of investigative reports and identity of agents.
35-3-65. Authority to work with other law enforcement agencies.

Article 4

Missing Children Information Center

35-3-80. Definitions.
35-3-81. Establishment, development, maintenance, and operation of center; staff.
35-3-82. Powers and duties.
35-3-83. Missing child reports.
Sec.
35-3-84. Sending information to center.
35-3-85. Registration of related organizations.

Article 5

Georgia Bureau of Investigation Nomenclature

35-3-100. Short title.
35-3-101. Definitions.
35-3-102. Permission required for use of bureau nomenclature.
35-3-103. Permission required for use of bureau symbols.
35-3-104. Procedures for seeking permission to use bureau nomenclature or symbols.
35-3-105. Injunction against violations.
35-3-106. Civil penalties.
35-3-107. Damage suits against violators.
35-3-108. Criminal penalties.

Article 6

Division of Forensic Sciences

35-3-150. Definitions.
35-3-151. Responsibilities.
35-3-152. Appointment, powers, and responsibilities of division director.
35-3-153. Chief medical examiner office created; appointment; responsibilities.
35-3-154. Division requirements.
35-3-154.1. Admission of reports from state crime laboratory.
35-3-155. Application of Administrative Procedure Act.

Article 6A

DNA Sampling, Collection, and Analysis

35-3-160. (Effective until January 1, 2013) Definitions; requirement for DNA analysis of bodily fluid obtained in noninvasive procedure for convicted felons; storage of profile in data bank.
35-3-161. (Effective until January 1, 2013) Time and procedure for withdrawal of blood samples.

Sec.
35-3-162. (Effective until January 1, 2013) Procedure for analysis and storage of blood sample; use of remainder of sample not subjected to analysis; confidentiality of results.
35-3-163. (Effective until January 1, 2013) Dissemination of information in data bank to law enforcement officials; comparison of profile; request for search; separate statistical data base authorized; fee for search and comparative analysis.
35-3-164. (Effective until January 1, 2013) Unlawful dissemination or use of information; obtaining sample without authority.
35-3-165. (Effective until January 1, 2013) Expungement of profile in data bank upon reversal and dismissal of conviction.

Article 6A

DNA Sampling, Collection, and Analysis

35-3-160. (Effective January 1, 2013) DNA analysis upon conviction of certain sex offenses.
35-3-161. (Effective January 1, 2013) Time and procedure for withdrawal of blood samples.
35-3-162. (Effective January 1, 2013) Procedure for analysis and storage of blood sample; use of remainder of sample not subjected to analysis; confidentiality of results.
35-3-163. (Effective January 1, 2013) Dissemination of information in data bank to law enforcement officials; comparison of profile; request for search; separate statistical data base authorized; fee for search and comparative analysis.
35-3-164. (Effective January 1, 2013) Unlawful dissemination or use of information; obtaining sample without authority.
35-3-165. (Effective January 1, 2013) Expungement of profile in data bank upon reversal and dismissal of conviction.

Article 7

State-Wide Alert System for Missing Disabled Adults

35-3-170. Short title.
35-3-171. Definitions.
35-3-172. Development and implementation of state-wide alert system for disabled adults.
35-3-173. Director to be state-wide coordinator for alert system.
35-3-174. Time for reporting elopement of disabled person from personal care home and assisted living community.
35-3-175. Recruitment of media, private and governmental entities, and others for assistance in developing and implementing alert system; contractual agreements for system support.
35-3-176. Criteria for activating alert system.
35-3-177. Verification that criteria for activation have been met.
35-3-178. Obligations of agencies participating in alert system; participation of Georgia Lottery Corporation in disseminating alert information through retail establishments.
35-3-179. Termination of alert system with respect to particular disabled adult.
35-3-180. Immunity from civil damages for dissemination of alert information.

Article 8

Alert Systems for Unapprehended Suspects

35-3-190. State-wide alert system for unapprehended murder or rape suspects determined to be serious public threats.
35-3-191. State-wide alert system for suspects of crimes involving death or serious injury of

peace officer; alert system for missing peace officer.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — By resolution (Ga. L. 1986, p. 534), the General Assembly designated the headquarters of the Georgia Bureau of Investigation as the "Phil Peters Building".

35-3-1. Definitions.

As used in this chapter, the term:

(1) "Bureau" means the Georgia Bureau of Investigation.

(2) "Director" means the director of the Georgia Bureau of Investigation. (Code 1981, § 35-3-1; Ga. L. 2005, p. 599, § 1/SB 146.)

Editor's notes. — This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act).

JUDICIAL DECISIONS

Cited in State v. Holton, 173 Ga. App. 241, 326 S.E.2d 235 (1984).

35-3-2. Creation.

There is created a Georgia Bureau of Investigation which shall be a separate department and agency of state government. (Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1972, p. 1015, §§ 1608, 1608.1; Ga. L. 1974, p. 109, § 2.)

JUDICIAL DECISIONS

Cited in State v. Holton, 173 Ga. App. 241, 326 S.E.2d 235 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 16A Am. Jur. 2d, Constitutional Law, §§ 347 et seq., 393.

C.J.S. — 16A C.J.S., Constitutional Law, §§ 616, 617.

35-3-3. Divisions of bureau.

The Georgia Bureau of Investigation shall be composed of the Investigations Division, the Forensic Sciences Division, the Georgia

Crime Information Center Division, and such other divisions as may be created by the board. (Ga. L. 1974, p. 109, § 2; Ga. L. 1980, p. 497, § 1.)

JUDICIAL DECISIONS

Cited in State v. Holton, 173 Ga. App. 241, 326 S.E.2d 235 (1984).

35-3-4. Powers and duties of bureau generally.

(a) It shall be the duty of the bureau to:

(1) Take, receive, and forward fingerprints, photographs, descriptions, and measurements of persons in cooperation with the bureaus and departments of other states and of the United States;

(2) Exchange information relating to crime and criminals;

(3) Keep permanent files and records of such information procured or received;

(4) Provide for the scientific investigation of articles used in committing crimes or articles, fingerprints, or bloodstains found at the scene of a crime;

(5) Provide for the testing and identification of weapons and projectiles fired therefrom;

(6) Acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(7) Acquire, collect, classify, and preserve immediately any information which would assist in the location of any missing person, including any minor, and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person and the bureau shall acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin;

(8) Exchange such records and information as provided in paragraphs (6) and (7) of this subsection with, and for the official use of, authorized officials of the federal government, the states, cities, counties, and penal and other institutions. With respect to missing minors, such information shall be transmitted immediately to other law enforcement agencies;

(9) Identify and investigate violations of Article 4 of Chapter 7 of Title 16;

(10) Identify and investigate violations of Part 2 of Article 3 of Chapter 12 of Title 16, relating to offenses related to minors;

(11) Identify and investigate violations of Article 8 of Chapter 9 of Title 16;

(12) Identify and investigate violations of Article 5 of Chapter 8 of Title 16;

(13) Identify and investigate violations of Code Section 16-5-46;

(14) Identify and investigate violations of Code Section 30-5-8 or 16-5-100; and

(15)(A) Acquire, collect, analyze, and provide to the board any information which will assist the board in determining a sexual offender's risk assessment classification in accordance with the board's duties as specified in Code Section 42-1-14, including, but not limited to, obtaining:

(i) Incident, investigative, supplemental, and arrest reports from law enforcement agencies;

(ii) Records from clerks of court;

(iii) Records and information maintained by prosecuting attorneys;

(iv) Records maintained by state agencies; and

(v) Other documents or information as requested by the board.

(B) As used in this paragraph, the term:

(i) "Board" means the Sexual Offender Registration Review Board.

(ii) "Risk assessment classification" means the level into which a sexual offender is placed based on the board's assessment.

(iii) "Sexual offender" has the same meaning as set forth in Code Section 42-1-12.

(b) In addition to the duties provided in subsection (a) of this Code section, the members of the bureau shall have and are vested with the same authority, powers, and duties as are possessed by the members of the Uniform Division of the Department of Public Safety under this title. (Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1941, p. 277, § 4; Ga. L. 1974, p. 109, § 2; Ga. L. 1977, p. 752, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1984, p. 690, § 2; Ga. L. 1985, p. 149, § 35; Ga. L. 1996, p. 416, § 9; Ga. L. 2007, p. 283, § 3/SB 98; Ga. L. 2008, p. 601, § 2/SB 388; Ga. L. 2010, p. 1162, § 2/SB 371; Ga. L. 2011, p. 217, § 9/HB 200; Ga. L. 2012, p. 351, § 5/HB 1110; Ga. L. 2012, p. 985, § 1/HB 895.)

The 2010 amendment, effective July 1, 2010, in subsection (a), deleted "or" at the end of paragraph (a)(10), substituted "; or" for a period at the end of paragraph (a)(11), and added paragraph (a)(12).

The 2011 amendment, effective July 1, 2011, in subsection (a), deleted "or" at the end of paragraph (a)(11), substituted "; or" for a period at the end of paragraph (a)(12), and added paragraph (a)(13).

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, deleted "or" at the end of paragraph (a)(12); substituted "; or" for a period at the end of paragraph (a)(13); and added paragraph (a)(14). The second 2012 amendment, effective July 1, 2012, in subsection (a), deleted "or" at the end of paragraph (a)(12), substituted "; and" for the period at the end of paragraph (a)(13), and added paragraph (a)(14).

Cross references. — Disposition of unclaimed dead bodies, § 31-21-20 et seq. Authority of director of forensic sciences division to make facilities of division available for post-mortem examinations and autopsies and to authorize licensed physicians or pathologists to act as medical examiners in performing post-mortem examinations or autopsies, § 45-16-22.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, paragraph (a)(14), as enacted by Ga. L. 2012, p. 985, § 1/HB 895, was redesignated as paragraph (a)(15), "and" was deleted at the end of paragraph (a)(13), and "; and" was substituted for a period at the end of paragraph (a)(14).

Law reviews. — For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 131 (2011). For article, "Crimes and Offenses: Crimes Against the Person," see 28 Ga. St. U. L. Rev. 131 (2011).

JUDICIAL DECISIONS

Investigation of missing persons. — State proved that the false statement alleged in the indictment was made in a matter within the jurisdiction of the Georgia Bureau of Investigation (GBI) because the GBI was actively investigating a missing person case; because two videos contained clues referencing a Georgia missing person and the location of a missing person's body parts in Augusta, and it was then determined that the computer from which the videos were being posted was in Georgia, the jury could reasonably infer that the other missing person cases referenced in the first video would have a Georgia connection, giving the GBI jurisdiction to investigate the cases. Haley v. State, 289 Ga. 515, 712 S.E.2d 838 (2011).

Cited in Pittman v. State, 110 Ga. App. 625, 139 S.E.2d 507 (1964); Interstate Life & Accident Ins. Co. v. Whitlock, 112 Ga. App. 212, 144 S.E.2d 532 (1965); Baxter v. State, 134 Ga. App. 286, 214 S.E.2d 578 (1975); State v. Mulkey, 252 Ga. 201, 312 S.E.2d 601 (1984); Allison v. State, 188 Ga. App. 460, 373 S.E.2d 273 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Power to contract for district headquarters. — Director of Georgia Bureau of Investigation has same power to contract with local governments for district headquarters as Commissioner of Public Safety. 1983 Op. Att'y Gen. No. 83-39.

Discovery requests for criminal investigation records of the Georgia Bureau of Investigation should be coordinated with the prosecuting attorney who should be the primary source for determining the response. 1998 Op. Att'y Gen. No. 98-15.

Bureau cannot destroy records pursuant to court order when not party litigant. — Department (now bureau) is neither authorized nor required to destroy the department's criminal identification records pursuant to an order entered in a case in which the department (now bureau) was not a party litigant. 1970 Op. Att'y Gen. No. 70-158.

Prohibited employment. — Individual may not be employed by the Georgia Bureau of Investigation Division of Foren-

sic Sciences at the same time that the individual is a county deputy coroner. 1997 Op. Att'y Gen. No. 97-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 230, 231, 241.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 640 et seq., 646 et seq., 655. 67 C.J.S., Officers and Public Employees, §§ 224, 225.

ALR. — Fingerprints, palm prints, or bare footprints as evidence, 28 ALR2d 1115.

Admissibility of bare footprint evidence, 45 ALR4th 1178.

35-3-4.1. Subpoena for production of electronic communication service records for computer or electronic device used in furtherance of certain offenses against minors.

(a)(1) In any investigation of a violation of Code Section 16-12-100, 16-12-100.1, or 16-12-100.2 involving the use of a computer or an electronic device in furtherance of an act related to a minor, or any investigation of a violation of Article 8 of Chapter 9 of Title 16, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of electronic communication service or remote communication service records or other information pertaining to a subscriber or customer of such service, exclusive of contents of communications.

(2) A provider of electronic communication service or remote computing service shall disclose to the bureau the:

(A) Name;

(B) Address;

(C) Local and long distance telephone connection records, or records of session times and durations;

(D) Length of service, including the start date, and types of service utilized;

(E) Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) Means and source of payment for such service, including any credit card or bank account number of a subscriber to or customer of such service.

(b) Upon failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or the deputy director for investigations, through the Attorney General or district attorney, may

apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena.

(c) The Attorney General may request that a natural person who refuses to produce relevant matter on the ground that the production of records may incriminate such person be ordered by the court to provide such records. With the exception of a prosecution for perjury, a natural person who complies with the court order to provide such records asserting a privilege against self-incrimination to which he or she is entitled by law shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence, documentary or otherwise.

(d)(1) Information obtained pursuant to a subpoena enforced by this Code section shall not be made public or, except as authorized in paragraph (2) of this subsection, disclosed by the director, assistant director, deputy director for investigations, or the director's employees beyond the extent necessary for the enforcement of this Code section.

(2) The director, assistant director, deputy director for investigations, or the director's employees shall be authorized to provide to any federal, state, or local law enforcement agency any information acquired under this Code section in furtherance of a criminal investigation in violation of Code Section 16-12-100, 16-12-100.1, or 16-12-100.2.

(e) As used in this Code section, the terms "electronic communication service" and "remote communication service" shall have the same meaning as set forth in Code Section 16-9-92. (Code 1981, § 35-3-4.1, enacted by Ga. L. 2007, p. 283, § 4/SB 98; Ga. L. 2008, p. 601, § 3/SB 388.)

Cross references. — Computer or electronic pornography and child exploitation prevention, § 16-12-100.2.

35-3-4.2. Subpoena authority for investigating fraudulent real estate transactions.

(a) In any investigation of a violation of Article 5 of Chapter 8 of Title 16 or other criminal violations involving fraudulent real estate transactions, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the

Attorney General, to compel the production of books, papers, documents, or other tangible things, including records and documents contained within, or generated by, a computer or any other electronic device.

(b) Upon the failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or the deputy director for investigations, through the Attorney General or district attorney, may apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court. (Code 1981, § 35-3-4.2, enacted by Ga. L. 2010, p. 1162, § 3/SB 371.)

Effective date. — This Code section became effective July 1, 2010.

Law reviews. — For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010).

35-3-4.3. Subpoena power for investigations of violations involving trafficking of persons for labor or sexual servitude.

(a) In any investigation of a violation of Code Section 16-5-46 involving trafficking of persons for labor or sexual servitude, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of books, papers, documents, or other tangible things, including records and documents contained within, or generated by, a computer or any other electronic device.

(b) Upon the failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or the deputy director for investigations, through the Attorney General or district attorney, may apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court. (Code 1981, § 35-3-4.3, enacted by Ga. L. 2011, p. 217, § 10/HB 200.)

Effective date. — This Code section became effective July 1, 2011.

Cross references. — Defense available for crimes committed while being trafficked, § 16-3-6.

Law reviews. — For article on the

2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 131 (2011). For article, "Crimes and Offenses: Crimes Against the Person," see 28 Ga. St. U. L. Rev. 131 (2011).

35-3-5. Director — Creation; appointment and removal; powers and duties.

(a) There is created the position of director.

(b) The director shall be the chief administrative officer and shall be both appointed and removed by the Board of Public Safety with the approval of the Governor.

(c) Except as otherwise provided by this chapter, and subject to the general policy established by the board, the director shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the bureau by this chapter. (Ga. L. 1974, p. 109, § 2; Ga. L. 2005, p. 599, § 2/SB 146.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 234 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 640 et seq., 655. 67 C.J.S., Officers and Public Employees, §§ 224, 225.

35-3-6. Director — Unclassified service; compensation.

The director shall be in the unclassified service as defined by Code Section 45-20-2 and his or her compensation shall be fixed by the board. (Ga. L. 1974, p. 109, § 2; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-50/HB 642.)

The 2012 amendment, effective July 1, 2012, in this Code section, substituted "as defined by Code Section 45-20-2" for "of the State Personnel Administration" and inserted "or her".

Cross references. — State merit system generally, § 45-20-1 et seq.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 271 et seq., 284 et seq., 436.

C.J.S. — 63 C.J.S., Municipal Corporations, § 634 et seq. 67 C.J.S., Officers and Public Employees, § 270 et seq.

35-3-7. Agreements by director and commissioner for provision of services and material.

The director and the commissioner of public safety are authorized to enter into agreements, subject to approval of the Board of Public Safety, for the provision of such services, material, or combination thereof as may be useful in the performance of the official duties of the bureau or the department. (Ga. L. 1974, p. 109, § 2; Ga. L. 1987, p. 3, § 35; Ga. L. 2005, p. 599, § 3/SB 146.)

Law reviews. — For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 230, 231, 241.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 224, 225.

35-3-8. Powers of agents of bureau generally.

(a) All properly appointed agents of the bureau shall have the powers, including the power of making arrests and appearing in court, for the enforcement of all criminal statutes pertaining to the manufacture, transportation, distribution, sale, or possession of liquor, wine, beer, alcoholic beverages, cigars, cigarettes, little cigars, cheroots, stogies, and loose or smokeless tobacco and shall concurrently with agents and enforcement officers appointed by the state revenue commissioner have the authority throughout the state to:

(1) Obtain and execute warrants for the arrest of persons charged with violations of such laws;

(2) Obtain and execute search warrants in the enforcement of such laws;

(3) Arrest without warrant any person found in violation of such laws, or endeavoring to escape, or if for other cause there is likely to be a failure of enforcement of such laws for want of an officer to issue a warrant;

(4) Make investigations in the enforcement of such laws and in connection therewith to go upon any property outside of buildings, posted or otherwise, in the performance of such duties;

(5) Seize and take possession of all property which is declared contraband under such laws; and

(6) Carry firearms while performing their duties.

(b) The enforcement powers conferred in this Code section upon agents of the bureau shall relate only to the enforcement of the criminal

provisions relating to the manufacture, transportation, distribution, sale, or possession of liquor, wine, beer, alcoholic beverages, cigars, cigarettes, little cigars, cheroots, stogies, and loose or smokeless tobacco and shall not extend to regulatory matters with respect to such products under the jurisdiction of the state revenue commissioner. (Ga. L. 1980, p. 420, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 2003, p. 665, § 42.)

Cross references. — Powers and duties of state revenue commissioner relating to enforcement of laws pertaining to manufacture or transportation of alcoholic beverages, § 3-2-30 et seq. Authority of agents of bureau with regard to laws pertaining to operation of vessels or boats upon waters of state, § 27-1-24. Powers and duties of state revenue commissioner relating to enforcement of laws pertaining to manufacture or transportation of cigars, cigarettes, and little cigars, § 48-11-19.

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 233 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, § 42. 63C Am. Jur. 2d, Public Officers and Employees, §§ 230, 231, 241. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 30 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 587, 589. 63 C.J.S., Municipal Corporations, §§ 486, 487, 492 et seq., 503. 67 C.J.S., Officers and Public Employees, § 224 et seq.

35-3-8.1. Power of bureau to assist other law enforcement agencies.

Upon request of the governing authority or chief law enforcement officer of any municipality, the sheriff of any county, the chief of the county police force of any county having a population of more than 100,000 according to the United States decennial census of 1970 or any future such census, the judge of the superior court of any county of this state, or the Governor, the director, in unusual circumstances, may, and in the case of a request by the Governor, shall, direct the bureau to render assistance in any criminal case, in the prevention or detection of violations of law, or in the detection or apprehension of persons violating the criminal laws of this state, any other state, or the United States. (Code 1981, § 35-3-8.1, enacted by Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35.)

JUDICIAL DECISIONS

O.C.G.A. § 35-3-13 is not the exclusive list of who may request investigative assistance from the bureau. Bureau officers are peace officers with the duty to assist and cooperate in the prevention and detection of violations of the laws of this state. Owens v. State, 251 Ga. 313, 305 S.E.2d 102 (1983).

Investigation of missing person cases. — State proved that the false

statement alleged in the indictment was made in a matter within the jurisdiction of the Georgia Bureau of Investigation (GBI) because: the GBI was actively investigating a missing person case; two videos contained clues referencing a Georgia missing person and the location of a missing person's body parts in Augusta; and, the computer from which the videos were being posted was in Georgia. Therefore, the jury could reasonably infer that the other missing person cases referenced in the first video would have a Georgia connection, giving the GBI jurisdiction to investigate the cases. Haley v. State, 289 Ga. 515, 712 S.E.2d 838 (2011).

35-3-9. Narcotics agents.

(a) The director is authorized to retain on a contractual basis such persons as he or she shall deem necessary to detect and apprehend violators of the criminal statutes of this state pertaining to the possession, sale, or use of narcotics or other dangerous drugs.

(b) Those persons contracting with the director pursuant to subsection (a) of this Code section shall be known as narcotics agents.

(c) The investigative services provided for in this Code section shall be designed to support local law enforcement efforts. The director shall, with the advice and consent of the board, appoint a three-member priority committee composed of a representative from the Georgia Sheriffs Association, the Georgia Association of Chiefs of Police, and the District Attorneys Association. The committee shall establish priorities for use of investigative resources and determine the bona fide nature of requests for assistance. The recommendations of the committee shall be followed by the director except where otherwise expressly authorized by the board.

(d) Narcotics agents shall have all powers necessary and incidental to the fulfillment of their contractual obligations, including the power of arrest when authorized by the director.

(e) No person shall be a narcotics agent unless he is at least 18 years of age.

(f) The director shall conduct a background investigation of all potential narcotics agents. If the background investigation discloses a criminal record, the applicant shall not be retained without the express approval of the board.

(g) Any matters pertaining to narcotics agents shall be exempt from Chapter 14 of Title 50, relating to meetings open to the public.

(h) Persons retained as narcotics agents shall be considered persons in the service of the bureau under a contract of hire with that agency whose employment of those persons as narcotics agents shall be considered an employment in the usual course of the business of that agency. Persons retained by the bureau as narcotics agents shall have all the rights and privileges of other employees of the bureau; provided,

however, that such persons shall be in the unclassified service as defined by Code Section 45-20-2 and therefore shall not be governed by any rules of position, classification, appointment, promotion, demotion, transfer, dismissal, qualification, compensation, seniority privileges, tenure, or other such matters concerning their employment established by the State Personnel Board or any successor boards or agencies.

(i) The director shall have all powers necessary and incidental to the effective operation of this Code section. (Ga. L. 1973, p. 544, § 1; Ga. L. 1976, p. 392, § 1; Ga. L. 1978, p. 1646, § 1; Ga. L. 1987, p. 3, § 35; Ga. L. 1990, p. 540, § 2; Ga. L. 2001, p. 1058, § 1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-51/HB 642.)

The 2012 amendment, effective July 1, 2012, inserted "or she" in subsection (a); substituted "composed" for "comprised" in the second sentence of subsection (c); in subsection (h), in the second sentence, substituted "as defined by Code Section 45-20-2" for "of the State Personnel Administration" near the middle, and deleted ", the State Personnel Administration," preceding "or any successor boards" near the end.

Cross references. — Possession, sale, and use of controlled substances, T. 16, C. 13. State merit system generally, § 45-20-1 et seq.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in Strong v. State, 246 Ga. 612, 272 S.E.2d 281 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Retirement credit for former service as narcotics agent. — Employees of the Georgia Bureau of Investigation, who are members of the Employees Retirement System, may purchase prior service credit under O.C.G.A. § 47-2-93 for former service as a narcotics agent pursuant to O.C.G.A. § 35-3-9. 1992 Op. Att'y Gen. No. 92-17.

Narcotics agents employed by the Georgia Bureau of Investigation may purchase prior service credit under the Peace Officers and Annuity Benefit Fund, pursuant to Act No. 849, passed in the 1992 General Assembly session, which amended O.C.G.A. § 47-17-44 by rewriting subsection (c). 1992 Op. Att'y Gen. No. 92-18.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, §§ 16, 18. 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 19, 21, 23, 47. 63C Am. Jur. 2d, Public Officers and Employees, §§ 230, 231, 241.

C.J.S. — 28 C.J.S., Drugs and Narcot-

ics, § 219. 63 C.J.S., Municipal Corporations, § 620. 67 C.J.S., Officers and Public Employees, §§ 68, 69, 224 et seq.

35-3-9.1. Special Cocaine Task Force.

Repealed pursuant to subsection (c) of Code Section 35-3-9.1, which provided for the repeal of this Code section on June 30, 1990.

Editor's notes. — This Code section was based on Ga. L. 1985, p. 552, § 2.

35-3-9.2. Mobile cocaine education van.

Repealed by Ga. L. 2005, p. 599, § 1/SB 146, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1981, § 35-3-9.2, enacted by Ga. L. 1985, p. 552, § 3. Ga. L. 2006, p. 72, § 35/SB 465, repealed the reservation of this Code section designation.

35-3-10. Participation by bureau personnel and director in Employees' Retirement System of Georgia.

All personnel and the director of the bureau are authorized to be members of the Employees' Retirement System of Georgia, as established by Chapter 2 of Title 47. All rights, credits, and funds in the retirement system which are possessed by any personnel of the bureau, including the director, at the time of employment in the bureau are continued; and it is the intention of the General Assembly that such personnel and the director shall not lose any rights, credits, or funds to which they were entitled prior to being employed with the bureau. (Ga. L. 1974, p. 109, § 2; Ga. L. 2001, p. 1058, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166, 1182.

C.J.S. — 63 C.J.S., Municipal Corporations, § 682 et seq. 67 C.J.S., Officers and Public Employees, § 311 et seq.

ALR. — Construction and application of Employee Retirement Income Security Act of 1974 (29 USCA § 1001 et seq.) by United States Supreme Court, 150 ALR Fed. 441.

35-3-11. Applicability of merit system to agents of bureau; retention of badge and weapon by disabled agent.

(a) All agents of the bureau shall be governed by such rules of position, classification, appointment, promotion, demotion, transfer, dismissal, qualification, compensation, seniority privileges, tenure, and other employment standards as may now or hereafter be established

under such merit system controls as may be authorized by Chapter 20 of Title 45.

(b) This Code section shall not apply to narcotics agents as provided for in Code Section 35-3-9.

(c) As used in this subsection, the term "disability" means a disability that prevents an individual from working as a law enforcement officer. When an agent of the bureau leaves the bureau as a result of a disability arising in the line of duty, such agent shall be entitled as part of such agent's compensation to retain his or her weapon and badge pursuant to regulations promulgated by the director. (Ga. L. 1974, p. 109, § 2; Ga. L. 2004, p. 1058, § 4; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-52/HB 642.)

The 2012 amendment, effective July 1, 2012, deleted ", relating to the State Personnel Board and the State Personnel Administration" following "Title 45" in subsection (a).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, §§ 14, 41 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 271 et seq., 284 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 40 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 634 et seq. 67 C.J.S., Officers and Public Employees, §§ 68, 69, 275, 276.

35-3-12. Payment of medical and similar expenses of members injured in line of duty; procedure.

The bureau is authorized to pay all medical, surgical, hospital, nursing, and other similar expenses incurred by any member of the bureau as a result of injuries received in the line of duty. The bureau is authorized to make such payments in addition to any award made by the State Board of Workers' Compensation based on such injuries. Such payments shall be made only upon proper presentation of bills to the bureau. The bureau and the injured party shall together ascertain the correctness of all bills presented. No payments shall be made without the approval of the bureau. (Ga. L. 1953, Nov.-Dec. Sess., p. 392, § 1.)

Cross references. — Workers' compensation generally, T. 34, C. 9. Insuring and indemnification of public officers and employees, T. 45, C. 9. State Employees' Health Insurance Plan, T. 45, C. 18, A. 1.

OPINIONS OF THE ATTORNEY GENERAL

Members paid for medical expenses for injuries in line of duty. — Members of the Georgia Bureau of Investigation may receive payments for medical expenses incurred as a result of injuries received in the line of duty. 1974 Op. Att'y Gen. No. 74-80.

35-3-13. Requests for investigation of criminal matters and crime related fires; access to local services and records.

(a) Any district attorney of this state may request the assistance of the bureau to conduct and exercise its lawful powers and authorities in the investigation of any criminal matter.

(b) Any head of a municipal or county fire department may request the assistance of the bureau to conduct and exercise its lawful powers and authorities in the investigation of any crime related fires.

(c) In the event the bureau acts in cooperation with a municipality or other political subdivision of the state, the services and records of such municipality or other subdivision shall be accessible and available to the bureau at all times. (Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1941, p. 277, § 4; Ga. L. 1977, p. 752, § 1; Ga. L. 1978, p. 254, § 2.)

JUDICIAL DECISIONS

O.C.G.A. § 35-3-13 is not the exclusive list of who may request investigative assistance from the bureau. Bureau officers are peace officers with the duty to assist and cooperate in the prevention and detection of violations of the laws of this state. Owens v. State, 251 Ga. 313, 305 S.E.2d 102 (1983).

Investigation of missing persons cases. — State proved that the false statement alleged in the indictment was made in a matter within the jurisdiction of the Georgia Bureau of Investigation (GBI) because: the GBI was actively investigating a missing person case; two videos contained clues referencing a Georgia missing person and the location of a missing person's body parts in Augusta; and, the computer from which the videos were being posted was in Georgia. Therefore, the jury could reasonably infer that the other missing person cases referenced in the first video would have a Georgia connection, giving the GBI jurisdiction to investigate the cases. Haley v. State, 289 Ga. 515, 712 S.E.2d 838 (2011).

Violation not grounds for suppression of evidence. — Violation of O.C.G.A. § 35-3-13 is not grounds for the suppression of evidence. Owens v. State, 251 Ga. 313, 305 S.E.2d 102 (1983).

Cited in Pittman v. State, 110 Ga. App. 625, 139 S.E.2d 507 (1964); Interstate Life & Accident Ins. Co. v. Whitlock, 112 Ga. App. 212, 144 S.E.2d 532 (1965); Baxter v. State, 134 Ga. App. 286, 214 S.E.2d 578 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Governor may authorize bureau to conduct investigations and make arrests. — Governor has the power and the authority to authorize the Georgia Bureau of Investigation to conduct investigations and make arrests in any criminal case in any county or municipality of this state. 1963-65 Op. Att'y Gen. p. 532.

RESEARCH REFERENCES

ALR. — Admissibility, in criminal case, of evidence discovered by warrantless search in connection with fire investigation — post-Tyler cases, 31 ALR4th 194.

35-3-14 through 35-3-16.

Repealed by Ga. L. 1997, p. 1421, § 2, effective May 1, 1997.

Editor's notes. — These Code sections were based on Ga. L. 1974, p. 563, § 1; Ga. L. 1990, p. 1735, § 1; Ga. 1994, p. 875, § 1.

ARTICLE 2

GEORGIA CRIME INFORMATION CENTER

Cross references. — Records checks for employees of personal care homes, § 31-7-250 et seq. Records checks for applicants for employment with Department of Human Resources or health agencies, § 49-2-14. Records checks for employees of day-care centers, § 49-5-60 et seq. Records checks for persons exercising supervisory or disciplinary power over children, § 49-5-110 et seq. Notification to Department of Corrections, Uniform Superior Court Rules, Rule 35.1. Filing requirements in criminal cases, Uniform Superior Court Rules, Rule 36.13.

Administrative rules and regulations. — Organization, practices, and procedures of the Georgia Crime Information Center, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Crime Information Center Council, Chapters 140-1 and 140-2.

Law reviews. — For article, "Georgia's Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine," see 40 Mercer L. Rev. 1 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Council may direct center to furnish data for pre-employment checks for criminal justice purposes. — Georgia Crime Information Center Council may direct the Georgia Crime Information Center to furnish criminal history data to state agencies and political subdivisions, or federal agencies, for their use in preemployment checks but only if the council feels that such information is being furnished for the prevention or detection of crime or the apprehension of criminal offenders. 1976 Op. Att'y Gen. No. 76-110.

35-3-30. Definitions.

As used in this article, the term:

(1) "Career criminal" means any person who has been previously convicted three times under the laws of this state of felonies or under

the laws of any other state or the United States of crimes which would be felonies if committed within this state.

(1.1) "Center" means the Georgia Crime Information Center.

(2) "Council" means the Georgia Crime Information Center Council.

(3) "Criminal justice agencies" means those public agencies at all levels of government which perform as their principal function activities relating to the apprehension, prosecution, adjudication, or rehabilitation of criminal offenders.

(4) "Criminal justice information" means the following classes of information:

(A) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, information, or other formal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. Such term also includes the age and sex of each victim as provided by criminal justice agencies. The term does not include identification information, such as fingerprint records, to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(B) "Restricted data" means data which contains information relating to data-gathering techniques, distribution methods, manuals, and forms.

(C) "Secret data" means data which includes information dealing with those operational and programming elements which prevent unlawful intrusion into the Georgia Crime Information Center/Criminal Justice Information System computer system, the communications network, and satellite computer systems handling criminal justice information.

(D) "Sensitive data" means data which contains statistical information in the form of reports, lists, and documentation, which information may identify a group characteristic. It may apply to groups of persons, articles, vehicles, etc., such as white males or stolen guns.

(5) "Criminal justice information system" means all those agencies, procedures, mechanisms, media, and forms, as well as the information itself, which are or which become involved in the origination, transmittal, storage, retrieval, and dissemination of information related to reported offenses, offenders, and the subsequent actions related to such events or persons.

(6) "Law enforcement agency" means a governmental unit of one or more persons employed full time or part time by the state, a state agency or department, or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(7) "Offense" means an act which is a felony, a misdemeanor, or a violation of a county or municipal ordinance. (Ga. L. 1973, p. 1301, § 1; Ga. L. 1976, p. 617, § 1; Ga. L. 1982, p. 952, §§ 1, 3; Ga. L. 1984, p. 22, § 35; Ga. L. 1985, p. 149, § 35; Ga. L. 2006, p. 379, § 23/HB 1059.)

Editor's notes. — Ga. L. 2006, p. 379, § 30(c)/HB 1059, not codified by the General Assembly, provides that: "The provisions of this Act shall not affect or abate the status as a crime of any such act or omission which occurred prior to the effective date of the Act repealing, repealing and reenacting, or amending such law, nor shall the prosecution of such crime be abated as a result of such repeal, repeal and reenactment, or amendment."

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 11 (2006).

For comment, "Confidentiality and Dissemination of Personal Information: An Examination of State Laws Governing Data Protection," see 41 Emory L.J. 1185 (1992).

JUDICIAL DECISIONS

Cited in Meinken v. Burgess, 262 Ga. 863, 426 S.E.2d 876 (1993).

35-3-31. Establishment of center; staff and equipment generally; State Personnel Board status of personnel.

(a) There is established for the state, within the Georgia Bureau of Investigation, a system for the intrastate communication of vital information relating to crimes, criminals, and criminal activity, to be known as the Georgia Crime Information Center.

(b) Central responsibility for the development, maintenance, and operation of the center shall be vested with the director of the center with the assistance and guidance of the Georgia Crime Information Council, the establishment of which is provided for in Code Section 35-3-32.

(c) The director of the center shall maintain the necessary staff along with support services to be procured within the Georgia state government, such as computer services from the Department of Administrative Services, physical space and logistic support from the Department of Public Safety, and other services or sources as necessary, to enable the effective and efficient performance of the duties and responsibilities ascribed to the center in this article.

(d) All personnel of the center shall be administered according to appropriate special and standard schedules issued pursuant to the rules of the State Personnel Board with due recognition to be given by the latter to the special qualifications and availability of the types of individuals required in such an agency. (Ga. L. 1973, p. 1301, § 2; Ga. L. 1974, p. 109, § 2; Ga. L. 1976, p. 617, § 2; Ga. L. 1982, p. 3, § 35; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-53/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "issued pursuant to the rules of the State Personnel Board" for "by the State Personnel Administration" in subsection (d).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

35-3-32. Establishment of council; composition; duties and responsibilities of council generally.

(a) There is created the Georgia Crime Information Center Council.

(b) The duties and responsibilities of the council are to:

(1) Advise and assist in the establishment of policies under which the center is to be operated;

(2) Ensure that the information obtained pursuant to this article shall be restricted to the items specified in this article and ensure that the center is administered so as not to accumulate any information or distribute any information that is not specifically approved in this article;

(3) Ensure that adequate security safeguards are incorporated so that the data available through this system is used only by properly authorized persons and agencies;

(4) Establish appropriate disciplinary measures to be taken by the center in the instance of violations of data reporting or dissemination of laws, rules, and regulations by criminal justice agencies or members thereof covered by this article; and

(5) Establish other policies which provide for the efficient and effective use and operation of the center under the limitations imposed by the terms of this article.

(c) The members of the board shall serve ex officio as members of the council and shall constitute the council. (Ga. L. 1973, p. 1301, § 5; Ga. L. 1976, p. 617, § 7; Ga. L. 1979, p. 613, § 1; Ga. L. 1987, p. 3, § 35.)

OPINIONS OF THE ATTORNEY GENERAL

Functions of the Georgia Crime Information Center Council include functions which are clearly executive functions within the meaning of the Constitution. 1975 Op. Att'y Gen. No. 75-142.

Former provision including judges as council members void. — Former statutory mandate that the council include a member of the Georgia Council of Superior Court Judges and a member of the Georgia Association of Municipal Judges is in conflict with the Constitution and is therefore void. 1975 Op. Att'y Gen. No. 75-142.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 68 et seq.

35-3-33. Powers and duties of center generally.

(a) The center shall:

(1) Obtain and file fingerprints, descriptions, photographs, and any other pertinent identifying data on persons who:

(A) Have been or are hereafter arrested or taken into custody in this state:

(i) For an offense which is a felony;

(ii) For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

(iii) For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under division (ii) of this subparagraph;

(iv) As a fugitive from justice; or

(v) For any other offense designated by the Attorney General;

(B) Are or become career criminals, well-known offenders, or habitual offenders;

(C) Are currently or become confined to any prison, penitentiary, or other penal institution;

(D) Are unidentified human corpses found in this state; or

(E) Are children who are charged with an offense that if committed by an adult would be a felony or are children whose cases

are transferred from a juvenile court to another court for prosecution;

(2) Compare all fingerprint and other identifying data received with those already on file and, whether or not a criminal record is found for a person, at once inform the requesting agency or arresting officer of such facts as may be disseminated consistent with applicable security and privacy laws and regulations. A log shall be maintained of all disseminations made of each individual criminal history including at least the date and recipient of such information;

(3) Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes reported to and otherwise processed by any and all law enforcement agencies within the state, as defined and provided for in this article;

(4) Periodically conduct audits of crime reporting practices of criminal justice agencies to ensure compliance with the standards of national and state uniform crime reporting systems and to ensure reporting of criminal arrests, dispositions, and custodial information;

(5) Develop, operate, and maintain an information system which will support the collection, storage, retrieval, and dissemination of all crime and offender data described in this article consistent with those principles of scope, security, and responsiveness prescribed by this article;

(6) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards, and related training assistance necessary for the uniform operation of the center;

(7) Offer assistance and, when practicable, instruction to all criminal justice agencies in establishing efficient local records systems;

(8) Compile statistics on the nature and extent of crime in the state and compile other data related to planning for and operating criminal justice agencies, provided that such statistics do not identify persons, and make available all such statistical information obtained to the Governor, the General Assembly, and any other governmental agencies whose primary responsibilities include the planning, development, or execution of crime reduction programs. Access to such information by the latter governmental agencies will be on an individual, written request basis wherein must be demonstrated a need to know, the intent of any analyses, dissemination of such analyses, and any security provisions deemed necessary by the center;

(9) Periodically publish in print or electronically statistics, no less frequently than annually, that do not identify persons and report such information to the Governor, the General Assembly, state and

local criminal justice agencies, and the general public. Such information shall accurately reflect the level and nature of crime in the state and the operations in general of the different types of agencies within the criminal justice system;

(10) Make available, upon request, to all local and state criminal justice agencies, all federal criminal justice agencies, and criminal justice agencies in other states any information in the files of the center which will aid these agencies in the performance of their official duties. For this purpose the center shall operate on a 24 hour basis, seven days a week. Such information when authorized by the council may also be made available to any other agency of the state or political subdivision of the state and to any other federal agency upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders;

(11) Cooperate with other agencies of the state, the crime information agencies of other states, and the Uniform Crime Reports and National Crime Information Center systems of the Federal Bureau of Investigation in developing and conducting an interstate, national, and international system of criminal identification, records, and statistics;

(12) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for in this article and to cooperate in the correction of the central center records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual;

(13) Institute the necessary measures in the design, implementation, and continued operation of the criminal justice information system to ensure the privacy and security of the system. This will include establishing complete control over use and access of the system and restricting its integral resources and facilities to those either possessed or procured and controlled by criminal justice agencies as defined in this article. Such security measures must meet standards to be set by the council as well as those set by the nationally operated systems for interstate sharing of information;

(14) Provide availability, by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to criminal justice agencies; and

(15) Receive and process fingerprints from the Supreme Court of Georgia Office of Bar Admissions for the purpose of determining

whether or not an applicant for admission to the State Bar of Georgia has a criminal record. The processing shall include submission of fingerprints to the Georgia Bureau of Investigation and the Federal Bureau of Investigation for comparison to each of their respective files and data bases.

(b) Criminal justice agencies shall furnish upon written request and without charge to any local fire department in this state a copy, processed under purpose code "E", of the criminal history record information of an applicant for employment.

(c) The provisions of this article notwithstanding, information and records of children shall only be inspected and disclosed as provided in Code Sections 15-11-82 and 15-11-83. Such records and information shall be destroyed according to the procedures outlined in Code Sections 15-11-79.2 and 15-11-81. (Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 617, § 5; Ga. L. 1980, p. 394, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 952, §§ 2, 4; Ga. L. 1984, p. 22, § 35; Ga. L. 1986, p. 513, § 1; Ga. L. 1992, p. 6, § 35; Ga. L. 1998, p. 842, § 7; Ga. L. 2000, p. 20, § 21; Ga. L. 2000, p. 1549, § 1; Ga. L. 2003, p. 334, § 2; Ga. L. 2007, p. 43, § 1/SB 62; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in the first sentence of paragraph (a)(9).

Law reviews. — For article, "Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations? Can Alternative Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Expend Processing Nontraffic Misdemeanor Offenses?," see 22 Ga. St. U. L. Rev. 313 (2005).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 175 (2003).

JUDICIAL DECISIONS

Cited in Kinney v. State, 223 Ga. App. 418, 477 S.E.2d 843 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Consideration
Fingerprintable Offenses Illustrated
Disclosure

General Consideration

Recording of crimes necessary to establish and maintain uniform system. — This article empowers the Georgia Crime Information Center to record crime as the center deems necessary to establish and maintain a uniform system of crime reporting. 1976 Op. Att'y Gen. No. 76-33 (see O.C.G.A. Art 2, Ch. 3, T. 35).

Limit on data gathered. — Center limits the center's gathering of data to information concerning arrests and convictions. 1976 Op. Att'y Gen. No. 76-11.

For updates of crimes and offenses for which the Georgia Crime Information

General Consideration (Cont'd)

Center is authorized to collect and file identifying data, see 1995 Op. Att'y Gen. Nos. 95-15, 95-16, 95-17, and 95-37; 1996 Op. Att'y Gen. No. 96-17; 1991 Op. Att'y Gen. No. 91-35.

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file fingerprints, see 1997 Op. Att'y Gen. No. 97-33; 1999 Op. Att'y Gen. No. 99-17.

Center identifies persons charged with crime, generally not persons charged with disorderly conduct. — Center is authorized to maintain records of reported crime and, in some instances, to record information identifying persons charged with the commission of crime; however, the center is not generally authorized to maintain records identifying persons charged with disorderly conduct. 1976 Op. Att'y Gen. No. 76-33.

Law enforcement agencies obtain fingerprints from arrested persons and forward prints to center. — This article requires persons in charge of law enforcement agencies to obtain fingerprints each time a person is arrested or taken into custody and to forward such prints to the center. 1975 Op. Att'y Gen. No. U75-34 (see O.C.G.A. Art 2, Ch. 3, T. 35).

Metropolitan Atlanta Crime Commission should not be considered a governmental agency in the context of paragraph (a)(8) of O.C.G.A. § 35-3-33. 1982 Op. Att'y Gen. No. 82-57.

First offender probationer to be recorded, maintained, and reported. — Person who has been placed on or discharged from first offender probation is in a disposition to be accurately recorded, maintained, and reported by the center. 1975 Op. Att'y Gen. No. 75-110.

Fingerprintable Offenses Illustrated

Fingerprintable offenses designated see 1979 Op. Att'y Gen. No. 79-56.

Hunting while license suspended. — While the offense in O.C.G.A. § 27-2-25.1(e), which provides that one who hunts while one's hunting license has been suspended for negligently causing injury or death to another while hunting shall be guilty of a misdemeanor of a high and aggravated nature, would ordinarily involve the use of firearms or other weapons to the extent that a violation might not involve weapons' use the Attorney General has designated this offense as one for which those charged with a violation are to be fingerprinted. 1984 Op. Att'y Gen. No. 84-44.

Hunting on land of another. — Hunting on the land of another without permission is not designated as an offense for which those charged with a violation must be fingerprinted, except to the extent mandated by statute. 1987 Op. Att'y Gen. No. 87-21.

Violation of any of the provisions of the Georgia Animal Protection Act, O.C.G.A. T. 4, C. 11, are offenses for which those charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Distributing products having appearance of controlled substances. — Manufacture, distribution, or possession with intent to distribute products which resemble the appearance of controlled substances or which otherwise would lead a reasonable person to believe that the products would have an effect similar to those of controlled substances is designated as an offense for which persons charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Driving under the influence of alcohol or drugs, in violation of O.C.G.A. § 40-6-391, is an offense for which persons charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Operating watercraft while under the influence of alcohol or drugs, in similar terms as those which apply to the operation of motor vehicles, is an offense for which those charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Using a law enforcement vehicle for personal use, unless the colored lights and lettering have been removed, is an offense for which those charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Using trucks whose suspension system has been altered in excess of the

limitations set forth in O.C.G.A. § 40-8-6.1 is an offense for which persons charged with a violation shall be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Applying opaque material to automobile glass. — Offense in O.C.G.A. § 40-8-73.1, which provides that a resident who operates a motor vehicle in this state that has material applied to the windshield or front windows that restricts the amount of light entering the vehicle shall be guilty of a misdemeanor, is designated as an offense for which persons charged with a violation shall be fingerprinted. 1984 Op. Att'y Gen. No. 84-44.

Improper use of handicapped parking privileges. — Offense set forth in O.C.G.A. § 40-6-225, which prohibits the improper use of a handicapped parking space, permit, or license plate, does not fall within any of the categories set forth by the General Assembly requiring fingerprinting, and the Attorney General has not so designated that offense. 1984 Op. Att'y Gen. No. 84-44.

Failure to remain at accident scene. — Failure of persons involved in a vehicle accident resulting in death, injury, or property damage to stop and remain at the scene of the accident is an offense for which persons charged are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Placing waste materials in a public sewer system without the express written permission of the governmental body which owns the system is an offense for which those charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Discharge of sewage from lake vessels. — Violation of O.C.G.A. § 52-7-8.1, which prohibits the discharge of sewage from vessels on certain specified lakes, is not designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Failure of embalmer, funeral director, or other to report diseased deceased. — Failure of an embalmer, funeral director, or other such person to be given notice after a person has been diagnosed as having certain diseases is not an offense for which the person who failed to make the notice is to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Hunting of alligators outside season and in excess of statutory limits is designated as an offense for which those charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Knowingly and willfully destroying, altering, or falsifying patient's health record with intent to conceal a material fact relating to a potential claim or cause of action is designated as an offense for which persons charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Counterfeit or false proof of insurance. — Violation of O.C.G.A. § 16-9-5, which prohibits the manufacture, sale, distribution, or possession of a counterfeit or false proof of insurance document, is designated as an offense for which persons charged with a violation shall be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Performance, display, or exhibit of specified sexual acts or portions of human body on premises licensed to sell or dispense alcoholic beverages for consumption on the premises is designated as an offense for which persons charged are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Operation of a "bath house" is an offense for which persons charged are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Failure to disclose campaign contributions. — Failure of applicants for rezoning actions and local government officials and their families to disclose campaign contributions or other gifts is an offense for which persons charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Battery. — Violation of O.C.G.A. § 16-5-23.1, which establishes the offense of battery, is an offense for which those charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Sexual battery. — Violation of the offense defined by O.C.G.A. § 16-6-22.1, which defines "sexual battery," is designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Cruising in merchant's parking area. — Offense of "cruising" in a mer-

Fingerprintable Offenses Illustrated (Cont'd)

chant's parking area is an offense for which those charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Failure to display official rating on video movies. — Failure of persons selling or renting video movies to display the official rating of the motion picture on the covering of the video movie is not designated as an offense which requires that persons charged with its violation be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Operation of credit repair services organization is an offense for which those charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Possession of alcoholic beverage by jail inmate. — Violation of O.C.G.A. § 42-4-13(c), which provides that it is a misdemeanor for an inmate of a jail to possess any alcoholic beverage, is not designated as an offense for which those charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Sale of tobacco products to or possession of tobacco by minors. — Provision of cigarettes or other tobacco products to minors, and the possession of tobacco products by minors, are not designated as offenses which require fingerprinting. 1987 Op. Att'y Gen. No. 87-21.

Substitution of generic for brand-name drugs. — Offenses prohibited in O.C.G.A. §§ 26-4-80 and 26-4-83, as revised in 1987, which regulate the substitution of generic drugs for brand-name prescription drugs by pharmacists, are offenses required to be fingerprinted by O.C.G.A. § 35-3-33 (a)(1)(A)(ii), which requires the fingerprinting of persons charged with an offense involving dangerous drugs and narcotics. 1987 Op. Att'y Gen. No. 87-21.

Tattooing within one inch of eyesocket. — Violation of O.C.G.A. § 16-12-5, which prohibits tattooing within one inch of a person's eyesocket, is not designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Tattooing minors. — Tattooing a person under the age of 16 is an offense for which those charged with its violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Theft by shoplifting. — O.C.G.A. § 36-32-9, which addresses the jurisdiction of cases in which a person is charged with a first or second offense of theft by shoplifting when the property taken was valued at $100.00 or less, does not require any modification in the designation of theft by shoplifting as an offense for which persons charged with a violation of are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Resisting or obstructing firefighter in lawful discharge of official duties is an offense for which persons charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Soliciting calls to telephone numbers with pre-call fees. — Use of automatic telephone dialing equipment and dissemination of pre-recorded messages, or the use of the United States mails, for the purpose of soliciting calls to "976" telephone numbers for which there are pre-call fees, is an offense for which persons charged are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Use of automatic dialing and recorded message equipment. — Prohibited use of automatic dialing and recorded message equipment is not designated as an offense which requires that persons charged with its violation be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Unsolicited fax machine advertising. — Violation of O.C.G.A. § 46-5-25, which prohibits the transmission of unsolicited facsimile messages for the purpose of advertising or offering for sale or lease goods, services, or property, is not designated as an offense which requires fingerprinting. 1990 Op. Att'y Gen. No. 90-22.

Violation of any section in O.C.G.A. § 4-4-80 et seq., regulating live poultry dealers, brokers, and market operators, is an offense for which those charged with a violation of are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Destruction of animal facility or animal valued at $500.00 or less. — Violation of O.C.G.A. § 4-11-32(c), which pro-

scribes damage to or destruction of an animal facility or animal valued at $500.00 or less, or entering a facility with the intent to disrupt or damage the enterprises conducted at that facility, is designated as an offense for which those charged with a violation are to be fingerprinted in order to promote consistency in the treatment of offenders. 1990 Op. Att'y Gen. No. 90-22.

Packaging of non-pure honey. — Violation of O.C.G.A. § 26-2-32, which provides that the packaging of a product as "honey" is unlawful unless the product is, in fact, pure honey manufactured by honeybees, is not designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Subjecting a student to activities which endanger a student's physical health in connection with or as a condition to joining or participating in a school organization is designated as an offense for which those charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Required reporting of students committing prohibited acts. — Violation of O.C.G.A. § 20-2-1184, which requires the reporting of students committing prohibited acts, is not designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Unlawful inducement to sublease motor vehicle. — Unlawful inducement of a motor vehicle buyer or lessee under a contract to sublease the vehicle without written consent of the holder of the contract or the lessor, and unlawful offering of a vehicle for hire by a sublessee, is designated as an offense for which persons charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Violating provisions of domestic violence order which excludes or evicts a person from a residence or household is designated as an offense for which those charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Disclosure

Disseminations to private, nongovernmental individuals is not authorized. — 1975 Op. Att'y Gen. No. 75-144.

Center can provide information to court in connection with civil election contests. — Georgia Crime Information Center and other criminal justice agencies can, in connection with civil election contests between private parties, provide criminal history record information to the court. 1975 Op. Att'y Gen. No. 75-144.

Candidate information to be provided to district attorneys and state court solicitors. — Center and all criminal justice agencies should disseminate to district attorneys and state court solicitors appropriate criminal history record information concerning any past or present candidate for public office. 1975 Op. Att'y Gen. No. 75-144.

Supplying information to State Election Board. — Since the State Election Board is empowered to investigate and enforce violations by civil actions, it would be entitled to receive criminal history record information in connection with any such investigation or litigation for offenses under former Code 1933, § 34-107 (see O.C.G.A. § 21-2-8). 1975 Op. Att'y Gen. No. 75-144.

Limitations on the center are not applicable to blood alcohol reports. 1976 Op. Att'y Gen. No. 76-11.

Administrative discretion determines when sufficient information received for record's dissemination. — It is a matter of administrative discretion to determine when sufficient identification has been received for dissemination of the proper record. 1975 Op. Att'y Gen. No. 75-144.

Center should purge the center's records only when the records are inaccurate. 1975 Op. Att'y Gen. No. 75-110.

Metropolitan Atlanta Crime Commission is not entitled to receive certain identifying information. — Metropolitan Atlanta Crime Commission is not entitled to receive crime data from Georgia Crime Information Center in a format identifying the individual law enforcement agencies which have contributed data to the Georgia Crime Information Center. 1982 Op. Att'y Gen. No. 82-57.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 68 et seq.

ALR. — Right to take fingerprints and photographs of accused before trial, or to retain same in police record after acquittal or discharge of accused, 83 ALR 127.

35-3-34. (For effective date, see note) Disclosure and dissemination of criminal records to private persons and businesses; resulting responsibility and liability of issuing center; provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System.

(a) (For effective date, see note) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to private persons and businesses under the following conditions:

(A) Private individuals and businesses requesting criminal history records shall, at the time of the request, provide the fingerprints of the person whose records are requested or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth;

(B) The center may not provide records of arrests, charges, and sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law;

(C) When the identifying information provided is sufficient to identify persons whose records are requested electronically, the center may disseminate electronically criminal history records of in-state felony convictions, pleas, and sentences without:

(i) Fingerprint comparison; or

(ii) Consent of the person whose records are requested; and

(D) The center shall not provide records of arrests, charges, or dispositions when access has been restricted pursuant to Code Section 35-3-37; or

(2) Make criminal history records of the defendant or witnesses in a criminal action available to counsel for the defendant upon receipt of a written request from the defendant's counsel under the following conditions:

(A) Such request shall contain the style of the case and the name and identifying information for each person whose records are requested. Such request shall be submitted to the center;

(B) In cases where the court has determined the defendant to be indigent, any fees authorized by law shall be waived; and

(C) Disclosure of criminal history information to the defendant's counsel as provided in this paragraph shall be solely in such counsel's capacity as an officer of the court. Any use of such information in a manner not authorized by law or the court in which such action is pending where the records were disclosed shall constitute a violation of Code Section 35-3-38; and

(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event that an employment decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with the dissemination pursuant to this Code section and shall be immune from suit based upon any such claims.

(d) Local criminal justice agencies may disseminate criminal history records, without fingerprint comparison or prior contact with the center, to private individuals and businesses under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as needed to reimburse such agencies for their direct and indirect costs related to the providing of such disseminations.

(d.1) Reserved.

(d.2) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:

(1) Fingerprint comparison;

(2) Prior contact with the center; or

(3) Consent of the person whose records are requested.

Such information may be disseminated to private individuals and businesses under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.

(d.3) No fee charged pursuant to this Code section may exceed $20.00 per person whose criminal history record is requested or be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

(d.4) The center shall place a high priority on inquiries from any nuclear power facility requesting a criminal history and shall respond to such requests as expeditiously as possible, but in no event shall a response be made more than two business days following receipt of the request.

(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal history records, wanted person records, and involuntary hospitalization records information to the Federal Bureau of Investigation in conjunction with the National Instant Criminal Background Check System in accordance with the federal Brady Handgun Violence Prevention Act, 18 U.S.C. Section 921, et seq.

(2) The records of the Georgia Crime Information Center shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the Georgia Crime Information Center shall be provided such information and no other mental health information from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges Training Council and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. Further, notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the time of the crime, has been involuntarily hospitalized, or both from the records of the clerks of the superior courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the

Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. After five years have elapsed from the date that a person's involuntary hospitalization information has been received by the Georgia Crime Information Center, the center shall purge its records of such information as soon as practicable and in any event purge such records within 30 days after the expiration of such five-year period.

(f) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section. The council shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided in accordance with this Code section. (Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 1401, § 2; Ga. L. 1977, p. 1243, § 1; Ga. L. 1978, p. 1981, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1988, p. 203, § 1; Ga. L. 1989, p. 1080, § 2; Ga. L. 1994, p. 1895, § 12; Ga. L. 1995, p. 139, § 3; Ga. L. 1995, p. 633, §§ 1, 2; Ga. L. 1996, p. 6, § 35; Ga. L. 2000, p. 1206, § 1; Ga. L. 2003, p. 840, § 1; Ga. L. 2005, p. 613, § 2/SB 175; Ga. L. 2006, p. 72, § 35/SB 465; Ga. L. 2006, p. 812, § 4/SB 532; Ga. L. 2012, p. 899, § 6-1/HB 1176.)

Delayed effective date. — Subsection (a), as set out above, becomes effective July 1, 2013. For version of subsection (a) in effect until July 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective July 1, 2013, in subsection (a), deleted "and" at the end of subparagraph (a)(1)(B), substituted "and" for "or" at the end of subparagraph (a)(1)(C), and added subparagraph (a)(1)(D).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, subsections (d.1) and (d.2), enacted by Ga. L. 1995, p. 633, § 2, were redesignated as subsections (d.2) and (d.3).

Pursuant to Code Section 28-9-5, in 1995, "subparagraph (a)(1)(B)" was substituted for "subparagraph (B) of paragraph (1) of subsection (a)" in the undesignated paragraph at the end of subsection (d.2).

Pursuant to Code Section 28-9-5, in 2005, the single quotes were deleted from "Brady Handgun Violence Prevention Act" at the end of paragraph (e)(1).

Editor's notes. — Ga. L. 1995, p. 139, § 7, not codified by the General Assembly, provides that no local ordinance which was in effect on March 22, 1995, shall be affected by Code Section 16-11-184 until January 1, 1996, at which time, unless enacted subsequent to March 22, 1995, as provided by that Code section, any such ordinance shall be of no further force or effect, and further provides that no ordinance or regulation attempting to regulate firearms in any manner shall be enacted by any county, city, or municipality after July 1, 1995.

Ga. L. 2012, p. 899, § 9-1/HB 1176, not codified by the General Assembly, provides that Part VI of this Act, which amended this Code section, shall become fully effective on July 1, 2013; provided, however, that for the purpose of preparing for implementation of Part VI of this Act, said part shall become effective on July 1, 2012.

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Ga. St. U. L. Rev. 137 (1994). For note on the 1995 amendment of this Code section and § 35-3-37, see 12 Ga. St. U. L. Rev. 118 (1995). For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 179 (2003).

OPINIONS OF THE ATTORNEY GENERAL

State free to maintain more or less restrictive access policy than contained in federal guidelines. — Recent changes in the federal Law Enforcement Assistance Administration regulations indicate that these rules are to be viewed as broad guidelines which set the outermost limits on the collection, storage, and dissemination of criminal history data; under this concept, the states would be free to maintain a more restrictive policy regarding public access to criminal history records, unless through legislation, ordinance, or executive or court order a state elects to adopt a more liberal policy in regard to the public's right to gain access to criminal history information. 1976 Op. Att'y Gen. No. 76-57.

General Assembly expressed desire to narrowly open access to criminal records to the private sector for the limited purpose of making preemployment checks and job assignment decisions in certain circumstances, as well as to have such information to assist them in making a determination as to whether to prosecute persons apprehended on the premises who are engaged in a criminal act against the business. 1976 Op. Att'y Gen. No. 76-57.

Word "businesses," as used in paragraph (a)(1), is a general term, and is not restricted solely to profit motivated enterprises. 1976 Op. Att'y Gen. No. 76-57 (see O.C.G.A. § 35-3-34).

Employment agencies, credit corporations, and firms doing background checks not entitled to information. — Subparagraph (a)(1)(A) refers to those individuals directly involved in making the ultimate decision as to whether to hire or transfer an individual to a new job assignment; accordingly, employment agencies, retail credit corporations, and firms doing background checks would not be entitled to criminal history information under this section. 1976 Op. Att'y Gen. No. 76-57 (see O.C.G.A. § 35-3-34).

Private security agency member not entitled to information. — Private security agency member hired by a business to protect the business's property, or any other member of the security agency hired by a business, would not be entitled to the criminal history information on the individual the agency has apprehended, or the agency suspects of committing a crime, since the security agency is not the business against whom the crime or suspected crime has been committed. 1976 Op. Att'y Gen. No. 76-57.

Permissible to relax local querying requirement when adjudications of guilt on criminal suspects sought. — Furnishing of adjudications of guilt to the personnel of a business on persons apprehended or suspected of having committed a specific criminal act, in which the victim is the business, is more in the nature of a criminal justice dissemination for which time in furnishing such information may be of the essence, so as not to prolong any detention of the individual apprehended; accordingly, it would be permissible to relax the local querying requirement when adjudications of guilt are sought. 1976 Op. Att'y Gen. No. 76-57.

Involuntary hospitalizations after March 22, 1995 must be reported to the Bureau of Investigation, even though the information is to be applied only to sales or transfers after January 1, 1996. 1996 Op. Att'y Gen. No. 96-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 2.

C.J.S. — 76 C.J.S., Records, §§ 76, 82 et seq., 116, 130, 131, 152.

ALR. — Immunity of police or other law enforcement officer from liability in defamation action, 100 ALR5th 341.

35-3-34.1. Circumstances when exonerated first offender's criminal record may be disclosed.

(a) Where an offender has been exonerated and discharged without court adjudication of guilt pursuant to Article 3 of Chapter 8 of Title 42, the center is authorized to provide the first offender's record of arrests, charges, or sentences if the offender was exonerated and discharged without a court adjudication of guilt on or after July 1, 2004, and either:

(1) The request for information is an inquiry about a person who has applied for employment with a public school, private school, child welfare agency, or a person or entity that provides day care for minor children or after school care for minor children and the person who is the subject of the inquiry to the center was prosecuted for the offense of child molestation, sexual battery, enticing a child for indecent purposes, sexual exploitation of a child, pimping, pandering, or incest;

(2) The request for information is an inquiry about a person who has applied for employment with a nursing home, assisted living community, personal care home, or a person or entity that offers day care for elderly persons and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, pandering, or a violation of Code Section 30-5-8; or

(3) The request for information is an inquiry about a person who has applied for employment with a facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to persons who are mentally ill as defined in Code Section 37-1-1 or developmentally disabled as defined in Code Section 37-1-1, and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, or pandering.

(b) First offender records including records of arrests, charges, or sentences may be released to any law enforcement unit and the Georgia Peace Officer Standards and Training Council where the request for information is an inquiry about a person who has applied for employment in a certified position or a person who is an applicant, candidate, or peace officer as defined in Code Section 35-8-2. (Code 1981, § 35-3-34.1, enacted by Ga. L. 2003, p. 840, § 3; Ga. L. 2006, p. 72, § 35/SB 465; Ga. L. 2006, p. 164, § 1/HB 1335; Ga. L. 2009, p. 453, § 3-10/HB 228; Ga. L. 2011, p. 227, § 23/SB 178.)

The 2011 amendment, effective July 1, 2011, inserted "assisted living community," near the middle of paragraph (a)(2).

Cross references. — Discharges disqualifying individuals from employment, § 42-8-63.1.

Law reviews. — For note on the 2003 enactment of this Code section, see 20 Ga. St. U. L. Rev. 179 (2003).

35-3-34.2. Exchange of national criminal history background checks on providers of care to children, the elderly, and persons with disabilities.

(a) It is the purpose of this Code section to authorize and facilitate, but not require, the exchange of national criminal history background checks with authorized agencies on behalf of qualified entities as authorized under federal law.

(b) As used in this Code section, the term:

(1) "Authorized agency" means any local government agency designated to report, receive, or disseminate information under the NCPA and the VCA.

(2) "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

(3) "FBI" means the Federal Bureau of Investigation.

(4) "National criminal history background check" means a fingerprint based check of state and national criminal history files based on submission of a set of classifiable fingerprints and records fee.

(5) "NCPA" means the National Child Protection Act of 1993, 42 U.S.C. Sections 3759, 5101 note, 5119, and 5119a through 5119c.

(6) "ORI" means an originating agency identifier.

(7) "Provider" means:

(A) A person who:

(i) Is employed by or volunteers with a qualified entity;

(ii) Owns or operates a qualified entity; or

(iii) Has or may have unsupervised access to a person to whom the qualified entity provides care; and

(B) A person who:

(i) Seeks to be employed by or volunteer with a qualified entity;

(ii) Seeks to own or operate a qualified entity; or

(iii) Seeks to have or may have unsupervised access to a person to whom the qualified entity provides care.

(8) "Qualified entity" means a business or organization, whether public, private, for profit, not for profit, or voluntary, that provides care or care placement services, including a business or organization

that licenses or certifies others to provide care or care placement services.

(9) "VCA" means the Volunteers for Children Act, 42 U.S.C. Sections 5101 note, 5119a, and 5119b.

(c) An authorized agency is responsible for the designation of qualified entities within its local jurisdiction and for the submission of national criminal history background checks as authorized under the NCPA and the VCA.

(d) An authorized agency, other than a criminal justice agency as defined in Code Section 35-3-30, must request an ORI from the FBI for the express purpose of submitting national criminal history background checks under this Code section. Requests shall be made in writing to the FBI through the center.

(e) National criminal history background checks shall be submitted directly to the center for a state records check; fingerprint cards shall then be forwarded to the FBI for a national check. The responses from both the state and national criminal history background checks shall be returned to the authorized agency.

(f) The authorized agency may provide directly to the qualified entity the state criminal history record provided as part of the national criminal history background check.

(g) An authorized agency shall be responsible for review of the national criminal history record provided as part of the national criminal history background check to determine whether the provider has been convicted of or is under indictment for a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and to convey that determination to the qualified entity.

(h) The qualified entity must obtain the fingerprints of the provider, communicate the fitness determination of the authorized agency to the provider, and notify the provider of his or her right to challenge the accuracy and completeness of any information contained in the national criminal history background check.

(i) Fees charged for a national criminal history background check shall be determined based on reasonable costs as allowed under federal law.

(j) The provisions of this Code section shall be supplementary to and not in place of any other law of this state which authorizes or requires background checks.

(k) Any person, authorized agency, or qualified entity, or any person who is an employee of an authorized agency or qualified entity, shall not

disseminate any criminal history or any information concerning any criminal history except the determination of fitness which such person obtains pursuant to this Code section. (Code 1981, § 35-3-34.2, enacted by Ga. L. 2005, p. 1196, § 1/SB 6.)

Code Commission notes. — The enactment of Code Section 35-3-35.1 by Ga. L. 2005, p. 980, § 1, irreconcilably conflicted with and was treated as superseded by the enactment of Code Section 35-3-34.2 by Ga. L. 2005, p. 1196, § 1. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2005, in paragraph (b)(5), the quotation marks were deleted from "National Child Protection Act of 1993," and "5119, and 5119a through 5119c" was substituted for "5119, 5119(a) to 5119(c)"; and, in paragraph (b)(9), the quotation marks were deleted from "Volunteers for Children Act," and "5119a, and 5119b" was substituted for "5119(a) and 5119(b)".

35-3-35. Disclosure and dissemination of records to public agencies and political subdivisions; responsibility and liability of issuing center.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies or their designated representatives, under the following conditions:

(A) Public agencies or political subdivisions shall, at the time of the request, provide the fingerprints of the person whose records are requested in such manner prescribed by the center, which may include the electronic imaging of a person's fingerprints, or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth; provided, however, that the provisions of this paragraph shall supersede any other provision relating to the submission of fingerprints to the center;

(B) The center may not provide records of arrests, charges, or sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law; and

(C) When the identifying information provided is sufficient to identify persons whose records are requested electronically, the center may disseminate electronically criminal history records of in-state felony convictions, pleas, and sentences without:

(i) Fingerprint comparison; or

(ii) Consent of the person whose records are requested;

(1.1) Make criminal history records maintained by the center available to any county board of registrars or county board of registration and election. The making of an application for voter registration shall be deemed to be consent of the person making the application to release such records to the county board of registrars or county board of registration and election. Such records shall be requested for the sole purpose of verification of information provided on voter registration cards by registration applicants;

(1.2) Make criminal history records maintained by the center and national criminal history records maintained by the Federal Bureau of Investigation, obtained by the center, available to the governing authority of any county or municipality, for any applicant or licensee in a specified occupation for which such local governing authority has adopted an ordinance or resolution requiring such applicants or licensees in a particular occupation or profession regulated by the governing authority to be fingerprinted as a condition of submitting an application or obtaining or renewing a license. The center shall establish a uniform method of obtaining criminal history records required under this paragraph. Such uniform method shall require the submission to the center of two complete sets of fingerprints and the records search fee. Upon receipt thereof, the center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the center shall notify the requesting local government authority in writing of any derogatory finding, including, but not limited to, any criminal record data regarding the fingerprint records check or if there is no such finding. Nothing in this paragraph shall prevent the local governing authority from obtaining national criminal history records directly from the Federal Bureau of Investigation, if an ordinance or resolution requiring the fingerprints of an applicant or licensee of a particular occupation or profession regulated by the local governing authority has been adopted by such governing authority of the county or municipality; and

(2) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event an employment or licensing decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the public agency, political subdivision, authority or instrumentality, or licensing or regulatory agency making

the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information disseminated nor have any liability for defamation, invasion of privacy, negligence, nor any other claim in connection with any dissemination pursuant to this Code section and shall be immune from suit based upon such claims.

(d) Local criminal justice agencies may disseminate criminal history records to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as necessary to reimburse such agencies for their direct and indirect costs associated with providing such disseminations.

(d.1) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:

(1) Fingerprint comparison;

(2) Prior contact with the center; or

(3) Consent of the person whose records are requested.

Such information may be disseminated to entities to which such records may be made available under subsection (d) of this Code section under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.

(d.2) No fee charged pursuant to this Code section may exceed $20.00 per person whose criminal history record is requested or be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

(e) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section. (Ga. L. 1978, p. 1981, § 1; Ga. L. 1988, p. 203, § 2; Ga. L. 1990, p. 1831, § 1; Ga. L. 1992, p. 1009,

§ 1; Ga. L. 1995, p. 633, §§ 3, 4; Ga. L. 2000, p. 1206, § 2; Ga. L. 2003, p. 840, § 2; Ga. L. 2007, p. 43, §§ 2, 3/SB 62.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "subparagraph (a)(1)(B)" was substituted for "subparagraph (B) of paragraph (1) of subsection (a)" in the undesignated paragraph at the end of subsection (d.1).

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 179 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 2.

C.J.S. — 76 C.J.S., Records, §§ 76, 82 et seq., 116, 130, 131, 152.

ALR. — Immunity of police or other law enforcement officer from liability in defamation action, 100 ALR5th 341.

35-3-35.1. Superseded.

Code Commission notes. — The enactment of Code Section 35-3-35.1 by Ga. L. 2005, p. 980, § 1/HB 501, irreconcilably conflicted with and was treated as superseded by the enactment of Code Section 35-3-34.2 by Ga. L. 2005, p. 1196, § 1/SB 6. See County of Butts v. Strahan, 151 Ga. 417 (1921).

35-3-36. Duties of state criminal justice agencies as to submission of fingerprints, photographs, and other identifying data to center; responsibility for accuracy.

(a) All criminal justice agencies within the state shall submit to the center fingerprints, descriptions, photographs when specifically requested, and other identifying data on persons who have been lawfully arrested or taken into custody in the state for all felonies and for the misdemeanors and violations designated in subparagraph (a)(1)(A) of Code Section 35-3-33 and for persons in the categories enumerated in subparagraphs (a)(1)(B), (a)(1)(C), and (a)(1)(D) of Code Section 35-3-33.

(b) It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, parole and probation officers, wardens, or other persons in charge of penal and correctional institutions in this state to furnish the center with any other data deemed necessary by the center to carry out its responsibilities under this article.

(c) All persons in charge of law enforcement agencies shall obtain or cause to be obtained fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation, full-face and profile photographs if photo equipment is available, and other available identifying data of each person arrested or taken into custody for an offense of a type designated in paragraph (1) of subsection (a) of Code Section 35-3-33, of all persons

arrested or taken into custody as fugitives from justice, and of all unidentified human corpses in their jurisdictions; but photographs need not be taken if it is known that photographs of the type listed taken within the previous year are on file. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall have any fingerprint record taken in connection therewith returned if required by statute or upon court order and any such dispositions must also be reported to the center.

(d) Fingerprints and other identifying data required to be taken under subsection (c) of this Code section shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned; but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the center so requests.

(e) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data for all felonies and for the misdemeanors and violations designated in subparagraph (a)(1)(A) of Code Section 35-3-33 immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If any such warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. In addition, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by the center confirm to the center all such arrest warrants of this type which continue to be outstanding.

(f) All persons in charge of state penal and correctional institutions shall obtain fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation or as otherwise directed by the center and full-face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the center together with any other identifying data requested within ten days after the arrival at the institution of the person committed. At the time of release of any person committed to a correctional institution, the institution shall again obtain fingerprints as provided for in this subsection and forward them to the center within ten days along with any other related information requested by the center. Immediately upon release, the institution shall notify the center of the release of the person.

(g) All persons in charge of law enforcement agencies, all clerks of court, all municipal judges where they have no clerks, all magistrates, and all persons in charge of state and county probation and parole offices shall supply the center with the information described in Code Section 35-3-33 on the basis of the forms and instructions to be supplied by the center.

(h) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with guidelines established by the center. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the center copies of identifying data, as required in accordance with center guidelines, in those files as will aid in establishing the nucleus of the state criminal identification file.

(i) All criminal justice agencies within the state shall submit to the center, periodically at a time and in such form as prescribed by the center, information regarding only the cases within its jurisdiction and in which it is or has been actively engaged. Such report shall be known as the "uniform crime report" and shall contain crimes reported and otherwise processed during the period preceding the period of report, including the number and nature of offenses committed, the disposition of such offenses, and such other information as the center shall specify, relating to the method, frequency, cause, and prevention of crime. The incident/complaint report forms used by criminal justice agencies shall, when applicable, include the identification of any victim who is a student and the name of the school attended by any such student.

(j) Any governmental agency which is not included within the description of those departments and agencies required to submit the uniform crime report provided for in subsection (i) of this Code section but which desires to submit a report shall be furnished with the proper forms by the center. When a report is received by the center from a governmental agency not required to make a report, the information contained therein shall be included within the periodic compilation provided for in paragraph (9) of subsection (a) of Code Section 35-3-33.

(k) Upon the request of the center, local law enforcement agencies shall periodically provide for audit samples of incident reports for the preceding reporting period so that the center may help ensure agency compliance with national and state uniform crime reporting requirements.

(l) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as practicable after the investigating

department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the investigating department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(m) If at any time after making a report as required by subsection (l) of this Code section it is determined by the reporting department or agency that a person is no longer wanted due to his apprehension or any other factor or when a vehicle or property stolen is recovered, the law enforcement agency shall immediately notify the center of such status. Furthermore, if the agency making the apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery.

(n) Neither the center nor its employees shall be responsible for the accuracy of information contained in records representing wanted persons, missing persons, and stolen serial numbered property established in computerized files on the Georgia Criminal Justice Information System (CJIS) network or in computerized files maintained by the Federal Bureau of Investigation National Crime Information Center (NCIC). Criminal justice agencies establishing such records bear all responsibilities for entry, update, and removal as dictated by actions of criminal justice employees and officials. (Ga. L. 1973, p. 1301, § 4; Ga. L. 1976, p. 617, § 6; Ga. L. 1980, p. 396, § 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1983, p. 884, § 4-1; Ga. L. 1984, p. 22, § 35; Ga. L. 1985, p. 149, § 35; Ga. L. 1992, p. 1022, § 1; Ga. L. 2001, p. 1024, § 1; Ga. L. 2002, p. 415, § 35; Ga. L. 2003, p. 336, § 1; Ga. L. 2003, p. 840, § 3A; Ga. L. 2012, p. 775, § 35/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, in subsection (a), substituted "subparagraph (a)(1)(A) of Code Section 35-3-33" for "subparagraph (A) of paragraph (1) of Code Section 35-3-33", and substituted "subparagraphs (a)(1)(B), (a)(1)(C), and (a)(1)(D) of Code Section 35-3-33" for "subparagraphs (B), (C), and (D) of paragraph (1) of Code Section 35-3-33"; substituted "paragraph (1) of subsection (a) of Code Section 35-3-33" for "paragraph (1) of Code Section 35-3-33" in subsection (c); and substituted "paragraph (9) of subsection (a) of Code Section 35-3-33" for "paragraph (9) of Code Section 35-3-33" in subsection (j).

Editor's notes. — Ga. L. 2003, p. 840, § 3A, which amended this Code section, purported to amend Code Section 33-3-36 but actually amended Code Section 35-3-36.

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 179 (2003).

JUDICIAL DECISIONS

Fingerprint record following nolle prosequi. — Defendant was not entitled to have fingerprint record returned following entry of nolle prosequi on charges for which record was made. Drake v. State, 170 Ga. App. 846, 318 S.E.2d 721 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Recording of crimes necessary to establish and maintain uniform system. — This article empowers the Georgia Crime Information Center to record crime as the center deems necessary to establish and maintain a uniform system of crime reporting. 1976 Op. Att'y Gen. No. 76-33 (see O.C.G.A. T. 35, Ch. 3, Art. 2).

Law enforcement agencies obtain fingerprints from arrested persons and forward prints to center. — This article requires persons in charge of law enforcement agencies to obtain fingerprints each time a person is arrested or taken into custody and forward such prints to the center. 1975 Op. Att'y Gen. No. U75-34 (see O.C.G.A. T. 35, Ch. 3, Art. 2).

Language "or cleared of the offense through court proceedings" in subsection (c) of O.C.G.A. § 35-3-36 must not be viewed in isolation, but in the context of O.C.G.A. § 35-3-37 which provides for inspection, correction, and expungement of records. 1982 Op. Att'y Gen. No. 82-8.

Subsection (c) of O.C.G.A. § 35-3-36 is directed only at a fingerprint record, not at an arrest record. 1982 Op. Att'y Gen. No. 82-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 2.

C.J.S. — 76 C.J.S., Records, §§ 76, 82 et seq., 116, 130, 131, 152.

ALR. — Right to take fingerprints and photographs of accused before trial, or to retain same in police record after acquittal or discharge of accused, 83 ALR 127.

35-3-37. (Effective until July 1, 2013. See note.) Inspection of criminal records; purging, modifying, or supplementing of records.

(a) Nothing in this article shall be construed so as to authorize any person, agency, corporation, or other legal entity to invade the privacy of any citizen as defined by the General Assembly or the courts other than to the extent provided in this article.

(b) The center shall make a person's criminal records available for inspection by such person or his or her attorney upon written application to the center. Should the person or his or her attorney contest the accuracy of any portion of the records, it shall be mandatory upon the center to make available to the person or such person's attorney a copy of the contested record upon written application identifying the portion of the record contested and showing the reason for the contest of accuracy. Forms, procedures, identification, and other related aspects pertinent to access to records may be prescribed by the center.

(c) If an individual believes his or her criminal records to be inaccurate or incomplete, he or she may request the original agency having

custody or control of the detail records to purge, modify, or supplement them and to notify the center of such changes. Should the agency decline to act or should the individual believe the agency's decision to be unsatisfactory, the individual or his or her attorney may, within 30 days of such decision, enter an appeal to the superior court of the county of his or her residence or to the court in the county where the agency exists, with notice to the agency, to acquire an order by the court that the subject information be expunged, modified, or supplemented by the agency of record. The court shall conduct a de novo hearing and may order such relief as it finds to be required by law. Such appeals shall be entered in the same manner as appeals are entered from the probate court, except that the appellant shall not be required to post bond or pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at the first term or in chambers. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient service on the agency having custody or control of the disputed records that such appeal has been entered. Should the record in question be found to be inaccurate, incomplete, or misleading as set forth in paragraph (3) of subsection (d) of this Code section, the court shall order it to be appropriately expunged, modified, or supplemented by an explanatory notation. Each agency or individual in the state with custody, possession, or control of any such record shall promptly cause each and every copy thereof in his or her custody, possession, or control to be altered in accordance with the court's order. Notification of each such deletion, amendment, and supplementary notation shall be promptly disseminated to any individuals or agencies, including the center, to which the records in question have been communicated, as well as to the individual whose records have been ordered so altered.

(d)(1) An individual who was:

(A) Arrested for an offense under the laws of this state but subsequent to such arrest is released by the arresting agency without such offense being referred to the prosecuting attorney for prosecution; or

(B) After such offense referred to the proper prosecuting attorney, and the prosecuting attorney dismisses the charges without seeking an indictment or filing an accusation

may request the original agency in writing to expunge the records of such arrest, including any fingerprints or photographs of the individual taken in conjunction with such arrest, from the agency files. Such request shall be in such form as the center shall prescribe. Reasonable fees shall be charged by the original agency and the center for the actual costs of the purging of such records, provided that such fees shall not exceed $50.00.

(2) Upon receipt of such written request, the agency shall provide a copy of the request to the proper prosecuting attorney. Upon receipt

of a copy of the request to expunge a criminal record, the prosecuting attorney shall promptly review the request to determine if it meets the criteria for expungement set forth in paragraph (3) of this subsection. If the request meets those criteria, the prosecuting attorney shall review the records of the arrest to determine if any of the material contained therein must be preserved in order to protect the constitutional rights of an accused under *Brady v. Maryland.*

(3) An individual has the right to have his or her record of such arrest expunged, including any fingerprints or photographs of the individual taken in conjunction with such arrest, if the prosecuting attorney determines that the following criteria have been satisfied:

(A) The charge was dismissed under the conditions set forth in paragraph (1) of this subsection;

(B) No other criminal charges are pending against the individual; and

(C) The individual has not been previously convicted of the same or similar offense under the laws of this state, the United States, or any other state within the last five years, excluding any period of incarceration.

(4) The agency shall expunge the record by destroying the fingerprint cards, photographs, and documents relating exclusively to such person. Any material which cannot be physically destroyed or which the prosecuting attorney determines must be preserved under *Brady v. Maryland* shall be restricted by the agency and shall not be subject to disclosure to any person except by direction of the prosecuting attorney or as ordered by a court of record of this state.

(5) It shall be the duty of the agency to notify promptly the center of any records which are expunged pursuant to this subsection. Upon receipt of notice from an agency that a record has been expunged, the center shall, within a reasonable time, restrict access to the criminal history of such person relating to such charge. Records for which access is restricted pursuant to this subsection shall be made available only to criminal justice officials upon written application for official judicial law enforcement or criminal investigative purposes.

(6) If the agency declines to expunge such arrest record, the individual may file an action in the superior court where the agency is located as provided in Code Section 50-13-19. A decision of the agency shall be upheld only if it is determined by clear and convincing evidence that the individual did not meet the criteria set forth in paragraph (3) of this subsection or subparagraphs (A) through (G) of paragraph (7) of this subsection. The court in its discretion may award reasonable court costs including attorney's fees to the individ-

ual if he or she prevails in the appellate process. Any such action shall be served upon the agency, the center, the prosecuting attorney having jurisdiction over the offense sought to be expunged, and the Attorney General who may become parties to the action.

(7) After the filing of an indictment or an accusation, a record shall not be expunged if the prosecuting attorney shows that the charges were nolle prossed, dead docketed, or otherwise dismissed because:

(A) Of a plea agreement resulting in a conviction for an offense arising out of the same underlying transaction or occurrence as the conviction;

(B) The government was barred from introducing material evidence against the individual on legal grounds including but not limited to the grant of a motion to suppress or motion in limine;

(C) A material witness refused to testify or was unavailable to testify against the individual unless such witness refused to testify based on his or her statutory right to do so;

(D) The individual was incarcerated on other criminal charges and the prosecuting attorney elected not to prosecute for reasons of judicial economy;

(E) The individual successfully completed a pretrial diversion program, the terms of which did not specifically provide for expungement of the arrest record;

(F) The conduct which resulted in the arrest of the individual was part of a pattern of criminal activity which was prosecuted in another court of this state, the United States, another state, or foreign nation; or

(G) The individual had diplomatic, consular, or similar immunity or inviolability from arrest or prosecution.

(8) If the prosecuting attorney having jurisdiction determines that the records should not be expunged because the criteria set forth in paragraph (3) or subparagraphs (A) through (G) of paragraph (7) of this subsection were not met, and the agency or center fails to follow the prosecuting attorney's recommendation, the prosecuting attorney having jurisdiction over the offense sought to be expunged or the Attorney General may appeal a decision by the agency or center to expunge a criminal history as provided in Code Section 50-13-19.

(9) An individual who has been indicted or charged by accusation that was subsequently dismissed, dead docketed, or nolle prossed may request an expungement as provided by paragraphs (1) through (3) of this subsection; provided, however, that if the prosecuting attorney objects to the expungement request within 60 days after

receiving a copy of said request from the agency, the agency shall decline to expunge and the individual shall have the right to appeal as provided by paragraph (6) of this subsection.

(10) Nothing in this subsection shall be construed as requiring the destruction of incident reports or other records that a crime was committed or reported to law enforcement. Further, nothing in this subsection shall be construed to apply to custodial records maintained by county or municipal jail or detention centers. It shall be the duty of the agency to take such action as may be reasonable to prevent disclosure of information to the public which would identify such person whose records were expunged.

(e) Agencies, including the center, at which criminal offender records are sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures, fees not to exceed $3.00, or restrictions including fingerprinting as are reasonably necessary to assure the records' security, to verify the identities of those who seek to inspect them, and to maintain an orderly and efficient mechanism for inspection of records.

(f) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall not apply to proceedings under this Code section.

(g) If the center has notified a firearms dealer that a person is prohibited from purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title 16 and if the prohibition is the result of such person's being involuntarily hospitalized within the immediately preceding five years, upon such person or his or her attorney making an application to inspect his or her records, the center shall provide the record of involuntary hospitalization and also inform the person or attorney of his or her right to a hearing before the judge of the probate court or superior court relative to such person's eligibility to possess or transport a handgun. (Ga. L. 1973, p. 1301, § 6; Ga. L. 1995, p. 139, § 4; Ga. L. 1997, p. 1345, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2012, p. 775, § 35/HB 942.)

The 2012 amendment, effective May 2, 2012, part of an Act to revise, modernize, and correct the Code, revised language in the sixth sentence of subsection (c).

Editor's notes. — Code Section 35-3-37 is set out twice in this Code. The first version is effective until July 1, 2013, and the second version becomes effective on that date.

Ga. L. 1995, p. 139, § 7, not codified by the General Assembly, provides that no local ordinance which was in effect on March 22, 1995, shall be affected by Code Section 16-11-184 until January 1, 1996, at which time, unless enacted subsequent to March 22, 1995, as provided by that Code section, any such ordinance shall be of no further force or effect, and further provides that no ordinance or regulation attempting to regulate firearms in any manner shall be enacted by any county, city, or municipality after July 1, 1995.

Ga. L. 1995, p. 139, § 8, not codified by

the General Assembly, provides that subsection (f) of this Code section shall be repealed automatically upon a final judicial determination that such Act is invalid for any reason.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2012, p. 899, § 9-1/HB 1176, not codified by the General Assembly, provides, in part, that Part VI of this Act, which amended this Code section, shall become fully effective on July 1, 2013; provided, however, that for the purpose of preparing for implementation of Part VI of this Act, said part shall become effective on July 1, 2012. For the version amended by Ga. L. 2012, p. 899, § 6-2/HB 1176, see the version of Code Section 35-3-37 set out below.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 182 (1997).

JUDICIAL DECISIONS

Investigatory case file open unless privacy invaded. — When "criminal history record information" has been incorporated by a law-enforcement agency into an investigatory case file, it should be open for public inspection unless its disclosure would constitute an invasion of privacy. Napper v. Georgia Television Co., 257 Ga. 156, 356 S.E.2d 640 (1987).

Hearing is mandatory under O.C.G.A. § 35-3-37(c). Strohecker v. Gwinnett County Police Dep't, 182 Ga. App. 853, 357 S.E.2d 305 (1987).

No modification following nolle prosequi. — Petitioner was not entitled to modification or expungement of criminal record to reflect entry of nolle prosequi on certain charges. Drake v. State, 170 Ga. App. 846, 318 S.E.2d 721 (1984).

Sheriff's office's refusal to expunge subject to appeal to superior court. — Trial court erred in dismissing an indictee's appeal from the sheriff's office's refusal to expunge the indictee's record without determining whether the charges had been nolle prossed for a reason set forth in O.C.G.A. § 35-3-37(d)(7)(A) through (G). If the charges had not been nolle prossed for one of these reasons, the refusal to expunge could not be affirmed. Grimes v. Catoosa County Sheriff's Office, 307 Ga. App. 481, 705 S.E.2d 670 (2010).

Discretionary appeal procedures. — Appeal of a superior court decision reviewing a decision of an agency denying a request to expunge criminal records requires the discretionary appeal procedures of O.C.G.A. § 5-6-35. Strohecker v. Gwinnett County Police Dep't, 182 Ga. App. 853, 357 S.E.2d 305 (1987).

Appeal to superior court. — By the statute's express provisions, an appeal from the denial of a request to expunge a criminal record under O.C.G.A. § 35-3-37(d)(6) is as provided in O.C.G.A. § 50-13-19. In such case, the review shall be conducted by the court without a jury and shall be confined to the record. Grimes v. Catoosa County Sheriff's Office, 307 Ga. App. 481, 705 S.E.2d 670 (2010).

Applicability to inaccurate, incomplete, or misleading records. — If a criminal record is inaccurate, incomplete, or misleading, a superior court has three available remedies—expungement, modification, or supplementation—so long as the court finds the remedy to be "required by law" and "appropriate." Meinken v. Burgess, 262 Ga. 863, 426 S.E.2d 876 (1993).

Expungement remedy exceptional. — Expungement should be reserved for exceptional cases based upon competing state and citizen interests, and the fact that the defendant's arrest record did not reflect that the defendant was acquitted by operation of law did not constitute an exceptional circumstance warranting the remedy of expungement instead of modification or supplement. Meinken v. Burgess, 262 Ga. 863, 426 S.E.2d 876 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Confidentiality of information obtained from Georgia Crime Information Center. — Since information supplied by the Georgia Crime Information Center to local law enforcement agencies may often contain nonconviction data, such as arrests resulting in acquittals, dismissals, or arrests resulting in no prosecutions, such material is of a sensitive nature and disclosure would be an unwarranted invasion of privacy of a citizen. 1981 Op. Att'y Gen. No. U81-47.

Information obtained pursuant to criminal history background check, required by O.C.G.A. § 16-11-129, from taking of fingerprints and checking of these fingerprints with those presently on file with the Georgia Crime Information Center is of a confidential nature and prohibited from public disclosure. 1981 Op. Att'y Gen. Op. No. U81-47.

Center may allow private researchers access to information under imposed conditions. — Georgia Crime Information Center is permitted to allow private researchers access to criminal history record information and to impose such conditions on that access as the center deems appropriate. 1975 Op. Att'y Gen. No. U75-78.

Only superior court judges may order records expunged or modified. — Only superior court judges may order criminal history records to be expunged or otherwise modified, and then only after strict compliance with the procedure set forth in O.C.G.A. § 35-3-37(c). 1989 Op. Att'y Gen. No. 89-60.

Expungement by city solicitor's office. — City of Atlanta Solicitor's office does not have the authority to approve the expungement by an original agency of a criminal arrest record involving a felony or misdemeanor state offense which is dismissed in municipal court and for which no indictment or accusation has been drawn. 1998 Op. Att'y Gen. No. U98-11.

Only basis upon which Georgia Crime Information Center shall expunge a record is upon clear finding by court that said record is inaccurate, incomplete, or misleading, and setting forth the factual basis for such finding. 1982 Op. Att'y Gen. No. 82-8.

Purging of records. — Center should purge the center's records only when the records are inaccurate. 1975 Op. Att'y Gen. No. 75-110.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 2.

C.J.S. — 76 C.J.S., Records, §§ 76, 82 et seq., 116, 126, 130, 131, 152.

ALR. — Judicial expunction of criminal record of convicted adult, 11 ALR4th 956.

Expunction of federal arrest records in absence of conviction, 97 ALR Fed. 652.

Effect of expungement of conviction on § 241(a)(4), (11) of Immigration and Nationality Act of 1952 (8 USC § 1251(a)(4), (11)), making aliens deportable for crimes involving moral turpitude or drugs, 98 ALR Fed. 750.

35-3-37. (Effective July 1, 2013) Review of individual's criminal history record information; definitions; privacy considerations; written application requesting review; inspection.

(a) As used in this Code section, the term:

(1) "Drug court treatment program" means a treatment program operated by a drug court division in accordance with the provisions of Code Section 15-1-15.

(2) "Entity" means the arresting law enforcement agency, including county and municipal jails and detention centers.

(3) "Mental health treatment program" means a treatment program operated by a mental health court division in accordance with the provisions of Code Section 15-1-16.

(4) "Nonserious traffic offense" means any offense in violation of Title 40 which is not prohibited by Article 15 of Chapter 6 of Title 40 and any similar such offense under the laws of a state which would not be considered a serious traffic offense under the laws of this state if committed in this state.

(5) "Prosecuting attorney" means the Attorney General, a district attorney, or the solicitor-general who had jurisdiction where the criminal history record information is sought to be modified, corrected, supplemented, amended, or restricted. If the offense was a violation of a criminal law of this state which, by general law, may be tried by a municipal, magistrate, probate, or other court that is not a court of record, the term "prosecuting attorney" shall include the prosecuting officer of such court or, in the absence of such prosecuting attorney, the district attorney of the judicial circuit in which such court is located.

(6) "Restrict," "restricted," or "restriction" means that the criminal history record information of an individual relating to a particular charge shall be available only to judicial officials and criminal justice agencies for law enforcement or criminal investigative purposes or to criminal justice agencies for purposes of employment in accordance with procedures established by the center and shall not be disclosed or otherwise made available to any private persons or businesses pursuant to Code Section 35-3-34.

(7) "Serious violent felony" shall have the same meaning as set forth in Code Section 17-10-6.1.

(8) "State" includes any state, the United States or any district, commonwealth, territory, or insular possession of the United States, and the Trust Territory of the Pacific Islands.

(9) "Youthful offender" means any offender who was less than 21 years of age at the time of his or her conviction.

(b) Nothing in this article shall be construed so as to authorize any person, agency, corporation, or other legal entity of this state to invade the privacy of any citizen as defined by the General Assembly or as defined by the courts other than to the extent provided in this article.

(c) The center shall make an individual's criminal history record information available for review by such individual or his or her designee upon written application to the center.

(d) If an individual believes his or her criminal history record information to be inaccurate, incomplete, or misleading, he or she may request a criminal history record information inspection at the center. The center at which criminal history record information is sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures or restrictions, including fingerprinting, as are reasonably necessary to assure the security of the criminal history record information, to verify the identities of those who seek to inspect such information, and to maintain an orderly and efficient mechanism for inspection of criminal history record information. The fee for inspection of criminal history record information shall not exceed $15.00, which shall not include the cost of the fingerprinting.

(e) If the criminal history record information is believed to be inaccurate, incomplete, or misleading, the individual may request that the entity having custody or control of the challenged information modify, correct, supplement, or amend the information and notify the center of such changes within 60 days of such request. In the case of county and municipal jails and detention centers, such notice to the center shall not be required. If the entity declines to act within 60 days of such request or if the individual believes the entity's decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the right to appeal to the court with original jurisdiction of the criminal charges in the county where the entity is located.

(f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order from the court with original jurisdiction of the criminal charges that the subject information be modified, corrected, supplemented, or amended by the entity with custody of such information. Notice of the appeal shall be provided to the entity and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient service on the entity having custody or control of the disputed criminal history record information. The court shall conduct a de novo review and, if requested by a party, the proceedings shall be recorded.

(g)(1) Should the court find by a preponderance of the evidence that the criminal history record information in question is inaccurate, incomplete, or misleading, the court shall order such information to be appropriately modified, corrected, supplemented, or amended as the court deems appropriate. Any entity with custody, possession, or control of any such criminal history record information shall cause each and every copy thereof in its custody, possession, or control to be altered in accordance with the court's order within 60 days of the entry of the order.

(2) To the extent that it is known by the requesting individual that an entity has previously disseminated inaccurate, incomplete, or misleading criminal history record information, he or she shall, by written request, provide to the entity the name of the individual, agency, or company to which such information was disseminated. Within 60 days of the written request, the entity shall disseminate the modification, correction, supplement, or amendment to the individual's criminal history record information to such individual, agency, or company to which the information in question has been previously communicated, as well as to the individual whose information has been ordered so altered.

(h) Access to an individual's criminal history record information, including any fingerprints or photographs of the individual taken in conjunction with the arrest, shall be restricted by the center for the following types of dispositions:

(1) Prior to indictment, accusation, or other charging instrument:

(A) The case was never referred for further prosecution to the proper prosecuting attorney by the arresting law enforcement agency and:

(i) The offense against such individual is closed by the arresting law enforcement agency. It shall be the duty of the head of the arresting law enforcement agency to notify the center whenever a record is to be restricted pursuant to this division. A copy of the notice shall be sent to the accused and the accused's attorney, if any, by mailing the same by first-class mail; or

(ii) The center does not receive notice from the arresting law enforcement agency that the offense has been referred to the prosecuting attorney or transferred to another law enforcement or prosecutorial agency of this state, any other state or a foreign nation, or any political subdivision thereof for prosecution and the following period of time has elapsed from the date of the arrest of such individual:

(I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated nature, two years;

(II) If the offense is a felony, other than a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, four years; or

(III) If the offense is a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

If the center receives notice of the filing of an indictment subsequent to the restriction of a record pursuant to this divi-

sion, the center shall make such record available in accordance with Code Section 35-3-34.

(B) The case was referred to the prosecuting attorney but was later dismissed; or

(C) The grand jury returned two no bills; and

(2) After indictment or accusation:

(A) Except as provided in subsection (i) of this Code section, all charges were dismissed or nolle prossed;

(B) The individual pleaded guilty to or was found guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in accordance with the provisions of Code Section 16-13-2, and the individual successfully completed the terms and conditions of his or her probation;

(C) The individual successfully completed a drug court treatment program or mental health treatment program, the individual's case has been dismissed or nolle prossed, and he or she has not been arrested for at least five years, excluding any arrest for a nonserious traffic offense; or

(D) The individual was acquitted of all of the charges by a judge or jury unless, within ten days of the verdict, the prosecuting attorney demonstrates to the trial court through clear and convincing evidence that the harm otherwise resulting to the individual is clearly outweighed by the public interest in the criminal history record information being publicly available because either:

(i) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine; or

(ii) The individual has been formally charged with the same or similar offense within the previous five years.

(i) After the filing of an indictment or accusation, an individual's criminal history record information shall not be restricted if:

(1) The charges were nolle prossed or otherwise dismissed because:

(A) Of a plea agreement resulting in a conviction of the individual for an offense arising out of the same underlying transaction or occurrence as the conviction;

(B) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including,

without limitation, the granting of a motion to suppress or motion in limine;

(C) The conduct which resulted in the arrest of the individual was part of a pattern of criminal activity which was prosecuted in another court of the state or a foreign nation; or

(D) The individual had diplomatic, consular, or similar immunity or inviolability from arrest or prosecution;

(2) The charges were tried and some but not all of the charges resulted in an acquittal; or

(3) The individual was acquitted of all charges but it is later determined that the acquittal was the result of jury tampering or judicial misconduct.

(j)(1) When an individual had felony charges dismissed or nolle prossed or was found not guilty of felony charges but was convicted of a misdemeanor offense or offenses arising out of the same underlying transaction or occurrence, such individual may petition the superior court in the county where the arrest occurred to restrict access to criminal history record information for such felony charges within four years of the arrest. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the arresting law enforcement agency and the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall grant an order restricting such criminal history record information if the court determines the charges in question did not arise out of the same underlying transaction or occurrence.

(2) When an individual was convicted of an offense and was sentenced to punishment other than the death penalty, but such conviction was vacated by the trial court or reversed by an appellate court or other post-conviction court, the decision of which has become final by the completion of the appellate process, and the prosecuting attorney has not retried the case within two years of the date the order vacating or reversing the conviction became final, such individual may petition the superior court in the county where the conviction occurred to restrict access to criminal history record information for such offense. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the judgment was reversed or vacated, the reason the prosecuting attorney has not retried the case,

and the public's interest in the criminal history record information being publicly available.

(3) When an individual's case has remained on the dead docket for more than 12 months, such individual may petition the superior court in the county where the case is pending to restrict access to criminal history record information for such offense. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the case was placed on the dead docket; provided, however, that the court shall not grant such motion if an active warrant is pending for such individual.

(4)(A) When an individual was convicted in this state of a misdemeanor or a series of misdemeanors arising from a single incident, and at the time of such conviction such individual was a youthful offender, provided that such individual successfully completed the terms of his or her sentence and, since completing the terms of his or her sentence, has not been arrested for at least five years, excluding any arrest for a nonserious traffic offense, and provided, further, that he or she was not convicted in this state of a misdemeanor violation or under any other state's law with similar provisions of one or more of the offenses listed in subparagraph (B) of this paragraph, he or she may petition the superior court in the county where the conviction occurred to restrict access to criminal history record information. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the individual's conduct and the public's interest in the criminal history record information being publicly available.

(B) Record restriction shall not be appropriate if the individual was convicted of:

(i) Child molestation in violation of Code Section 16-6-4;

(ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(iii) Sexual assault by persons with supervisory or disciplinary authority in violation of Code Section 16-6-5.1;

(iv) Keeping a place of prostitution in violation of Code Section 16-6-10;

(v) Pimping in violation of Code Section 16-6-11;

(vi) Pandering by compulsion in violation of Code Section 16-6-14;

(vii) Masturbation for hire in violation of Code Section 16-6-16;

(viii) Giving massages in a place used for lewdness, prostitution, assignation, or masturbation for hire in violation of Code Section 16-6-17;

(ix) Sexual battery in violation of Code Section 16-6-22.1;

(x) Any offense related to minors generally in violation of Part 2 of Article 3 of Chapter 12 of Title 16;

(xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such prohibition shall not apply to a misdemeanor conviction of shoplifting in violation of Code Section 16-8-14; or

(xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

(5) Any party may file an appeal of an order entered pursuant to this subsection as provided in Code Section 5-6-34.

(k)(1) The center shall notify the arresting law enforcement agency of any criminal history record information, access to which has been restricted pursuant to this Code section, within 30 days of the date access to such information is restricted. Upon receipt of notice from the center that access to criminal history record information has been restricted, the arresting law enforcement agency or other law enforcement agency shall, within 30 days, restrict access to all such information maintained by such arresting law enforcement agency or other law enforcement agency for such individual's charge.

(2) An individual who has had criminal history record information restricted pursuant to this Code section may submit a written request to the appropriate county or municipal jail or detention center to have all records for such individual's charge maintained by the appropriate county or municipal jail or detention center restricted. Within 30 days of such request, the appropriate county or municipal jail or detention center shall restrict access to all such criminal history record information maintained by such appropriate county or municipal jail or detention center for such individual's charge.

(3) The center shall be authorized to unrestrict criminal history record information based on the receipt of a disposition report showing that the individual was convicted of an offense arising out of

an arrest of which the information was restricted pursuant to this Code section.

(l) If criminal history record information is restricted pursuant to this Code section and if the entity declines to restrict access to such information, the individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the entity shall be upheld only if it is determined by clear and convincing evidence that the individual did not meet the criteria set forth in subsection (h) or (j) of this Code section.

(m)(1) For criminal history record information maintained by the clerk of court, an individual who has a record restricted pursuant to this Code section may petition the court with original jurisdiction over the charges in the county where the clerk of court is located for an order to seal all criminal history record information maintained by the clerk of court for such individual's charge. Notice of such petition shall be sent to the clerk of court and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient notice.

(2) The court shall order all criminal history record information in the custody of the clerk of court, including within any index, to be restricted and unavailable to the public if the court finds by a preponderance of the evidence that:

(A) The criminal history record information has been restricted pursuant to this Code section; and

(B) The harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(3) Within 60 days of the court's order, the clerk of court shall cause every document, physical or electronic, in its custody, possession, or control to be restricted.

(4) The person who is the subject of such sealed criminal history record information may petition the court for inspection of the criminal history record information included in the court order. Such information shall always be available for inspection, copying, and use by criminal justice agencies and the Judicial Qualifications Commission.

(n)(1) As to arrests occurring before July 1, 2013, an individual may, in writing, request the arresting law enforcement agency to restrict the criminal history record information of an arrest, including any fingerprints or photographs taken in conjunction with such arrest.

Reasonable fees shall be charged by the arresting law enforcement agency and the center for the actual costs of restricting such records, provided that such fee shall not exceed $50.00.

(2) Within 30 days of receipt of such written request, the arresting law enforcement agency shall provide a copy of the request to the prosecuting attorney. Within 90 days of receiving the request, the prosecuting attorney shall review the request to determine if he or she agrees to record restriction, and the prosecuting attorney shall notify the arresting law enforcement agency of his or her decision within such 90 day period. The arresting law enforcement agency shall inform the individual of the prosecuting attorney's decision, and, if record restriction is approved by the prosecuting attorney, the arresting law enforcement agency shall restrict the criminal history record information within 30 days of receipt of the prosecuting attorney's decision.

(3) If a prosecuting attorney declines an individual's request to restrict access to criminal history record information, such individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the prosecuting attorney shall not be upheld if it is determined by clear and convincing evidence that the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(4) To restrict criminal history record information at the center, an individual shall submit a prosecuting attorney's approved record restriction request or a court order issued pursuant to paragraph (3) of this subsection to the center. The center shall restrict access to such criminal history record information within 30 days from receiving such information.

(o) Nothing in this Code section shall give rise to any right which may be asserted as a defense to a criminal prosecution or serve as the basis for any motion that may be filed in any criminal proceeding. The modification, correction, supplementation, amendment, or restriction of criminal history record information shall not abate or serve as the basis for the reversal of any criminal conviction.

(p) Any application to the center for access to or restriction of criminal history record information made pursuant to this Code section shall be made in writing on a form approved by the center. The center shall be authorized to develop and publish such procedures as may be necessary to carry out the provisions of this Code section. In adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall not apply.

(q) It shall be the duty of the entity to take such action as may be reasonable to prevent disclosure of information to the public which would identify any individual whose criminal history record information is restricted pursuant to this Code section.

(r) If the center has notified a firearms dealer that an individual is prohibited from purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title 16 and if the prohibition is the result of such individual being involuntarily hospitalized within the immediately preceding five years, upon such individual or his or her attorney making an application to inspect his or her records, the center shall provide the record of involuntary hospitalization and also inform the individual or attorney of his or her right to a hearing before the judge of the probate court or superior court relative to such individual's eligibility to possess or transport a handgun. (Code 1981, § 35-3-37, enacted by Ga. L. 2012, p. 899, § 6-2/HB 1176.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, a period was added at the end of paragraph (j)(3).

Editor's notes. — Code Section 35-3-37 is set out twice in this Code. The first version is effective until July 1, 2013, and the second version becomes effective on that date.

Ga. L. 2012, p. 899, § 6-2/HB 1176, effective July 1, 2013, repealed the former Code section and enacted the current Code section. The former Code section was based on Ga. L. 1973, p. 1301, § 6; Ga. L. 1995, p. 139, § 4; Ga. L. 1997, p. 1345, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2012, p. 775, § 35/HB 942.

Ga. L. 2012, p. 899, § 9-1/HB 1176, not codified by the General Assembly, provides, in part, that Part VI of this Act, which amended this Code section, shall become fully effective on July 1, 2013; provided, however, that for the purpose of preparing for implementation of Part VI of this Act, said part shall become effective on July 1, 2012.

35-3-38. Unauthorized requests or disclosures of criminal history record information; disclosure of techniques used to ensure security or privacy of criminal history records.

(a) Any person who knowingly requests, obtains, or attempts to obtain criminal history record information under false pretenses, or who knowingly communicates or attempts to communicate criminal history record information to any agency or person except in accordance with this article, or any member, officer, employee or agent of the center, the council, or any participating agency who knowingly falsifies criminal history record information or any records relating thereto shall for each such offense, upon conviction thereof, be fined not more than $5,000.00, or imprisoned for not more than two years, or both.

(b) Any person who communicates or attempts to communicate criminal history record information in a negligent manner not in accordance with this article shall for each such offense, upon conviction

thereof, be fined not more than $100.00, or imprisoned not more than ten days, or both.

(c) Any person who knowingly discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems except in accordance with this article shall for each such offense, upon conviction thereof, be fined not more than $5,000.00, or imprisoned not more than two years, or both.

(d) Any person who discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems in a manner not permitted by this article shall for each such offense, upon conviction thereof, be fined not more than $100.00, or imprisoned not more than ten days, or both. (Ga. L. 1973, p. 1301, § 7; Ga. L. 1976, p. 617, § 8; Ga. L. 1982, p. 3, § 35.)

JUDICIAL DECISIONS

No private cause of action. — Individual's violation of O.C.G.A. § 35-3-38 did not, in and of itself, give rise to a private cause of action against the individual for damages. Sparks v. Thurmond, 171 Ga. App. 138, 319 S.E.2d 46 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 32 Am. Jur. 2d, False Pretenses, §§ 1, 55 56. 37 Am. Jur. 2d, Fraud and Deceit, §§ 56, 59.

C.J.S. — 35 C.J.S., False Pretenses, §§ 7, 8, 19. 37 C.J.S., Fraud, § 1 et seq.

35-3-39. Effect of neglect or refusal of official to act as required by article.

Any officer or official mentioned in this article who shall neglect or refuse to make any report or to do any act required by any provision of this article shall be deemed guilty of nonfeasance in office and subject to removal therefrom. (Ga. L. 1973, p. 1301, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 170, 195. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 22 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 663 et seq. 67 C.J.S., Officers and Public Employees, §§ 154 et seq., 240 et seq.

35-3-39.1. National Crime Prevention and Privacy Compact; ratification; criminal history records repository.

(a) As used in this Code section, the term:

(1) "Compact" means the National Crime Prevention and Privacy Compact established by Section 217 of the federal law.

(2) "Compact council" means the compact council established by Article VI of the compact.

(3) "Director" means the director of the Georgia Crime Information Center.

(4) "Federal law" means the National Crime Prevention and Privacy Compact Act of 1998 contained in Public Law 92-544, 42 U.S.C. Section 14616.

(5) "Interstate Identification Index System" or "III System" means the cooperative federal-state system for the exchange of criminal history records as provided for in the compact.

(b) The National Crime Prevention and Privacy Compact established by federal law is ratified, enacted, and entered into by the State of Georgia. The compact shall become operative immediately upon approval of this state's participation by the United States Attorney General.

(c) The director shall be the compact officer and shall be responsible for:

(1) Administering the compact within this state;

(2) Ensuring that compact provisions and rules, procedures, and standards established by the compact council are complied with in this state; and

(3) Regulating the in-state use of records received from the Federal Bureau of Investigation or other states party to the compact.

(d) The center shall establish and maintain a criminal history record repository to provide:

(1) Information and records for the National Identification Index and the National Fingerprint File; and

(2) This state's III System-indexed criminal history records for noncriminal justice purposes described in Article IV of the compact.

(e) This state shall comply with III System rules, procedures, and standards established pursuant to the compact concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of the III System operation.

(f) Use of the III System by the center for noncriminal justice purposes authorized in the compact shall be managed so as not to

diminish the level of services provided in support of criminal justice purposes.

(g) Administration of the compact provisions shall not reduce the level of services available to noncriminal justice users on the effective date of the compact with this state.

(h) The center shall provide criminal history records, excluding sealed records, to criminal justice agencies and other governmental and nongovernmental agencies for noncriminal justice purposes as required by the compact.

(i) Records obtained under the compact may be used only for the official purposes for which the records were requested and under such procedures established by the director in conformity with rules, procedures, and standards established pursuant to Article IV of the compact.

(j) Notwithstanding any other law to the contrary, fingerprints or other forms of positive identification, as provided for in the compact, shall be submitted with all requests for criminal history record checks for noncriminal justice purposes authorized under the compact. Such records checks made pursuant to any other law of this state shall comply with this Code section, the compact, and federal law. (Code 1981, § 35-3-39.1, enacted by Ga. L. 1999, p. 574, § 1; Ga. L. 2000, p. 136, § 35; Ga. L. 2000, p. 1549, § 2.)

Cross references. — Organized Crime Prevention Council, T. 35, C. 7. Use of confidential, classified, or restricted records for research, § 50-18-101.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "of 1998" was substituted for "of of 1998" in paragraph (a)(4).

Law reviews. — For note on 1999 enactment of this Code section, see 16 Ga. St. U. L. Rev. 227 (1999).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Governmental Entity's Liability for Failure to Prevent Crime, 30 POF2d 429.

35-3-40. Construction of article.

(a) In the event of conflict, this article shall to the extent of the conflict supersede all existing statutes which regulate, control, or otherwise relate, directly or by implication, to the collection, storage, and dissemination or usage of fingerprint identification, offender criminal history, uniform crime reporting, and criminal justice activity data records or any existing statutes which relate directly or by implication to any other provisions of this article.

(b) Notwithstanding subsection (a) of this Code section, this article shall not be understood to alter, amend, or supersede the statutes and

rules of law governing the collection, storage, dissemination, or usage of records concerning individual juvenile offenders in which they are individually identified by name or by other means. (Ga. L. 1973, p. 1301, § 9.)

ARTICLE 3

ANTITERRORISM TASK FORCE

35-3-60. Short title.

This article shall be known and may be cited as the "Antiterrorism Act." (Code 1981, § 35-3-60, enacted by Ga. L. 1984, p. 22, § 35.)

Editor's notes. — Ga. L. 1984, p. 22, § 35, effective February 3, 1984, repealed former § 35-3-60, which dealt with legislative findings (see now § 35-3-61(a)), and enacted current § 35-3-60. Former § 35-3-60 was based on Ga. L. 1983, p. 393, § 1.

35-3-61. Legislative findings; purpose; liberal construction.

(a) This article is enacted as a direct response to the high level of reactivation of violent and terroristic acts against persons residing within the State of Georgia and in response to the outcry of the communities for assistance from the State of Georgia in combating these violent and terroristic acts.

(b) The purpose of this article shall be to assist law enforcement personnel in the State of Georgia to identify, investigate, arrest, and prosecute individuals or groups of individuals who illegally threaten, harass, terrorize, or otherwise injure or damage the person or property of persons on the basis of their race, national origin, or religious persuasion.

(c) It is the intent of the General Assembly that this article be interpreted and construed liberally to accomplish its purposes. (Code 1981, § 35-3-61, enacted by Ga. L. 1983, p. 393, § 1; Ga. L. 1984, p. 22, § 35.)

Editor's notes. — The language formerly contained in subsection (a) of this Code section prior to the 1984 amendment is now contained in § 35-3-60. See § 35-3-60 and notes thereto.

35-3-62. "Terroristic act" defined.

As used in this article, the term "terroristic act" means an act which constitutes a crime against the person or against the residence of an individual which is committed with the specific intent of and may reasonably be expected to instill fear into such person or persons or

which is committed for the purpose of restraining that person or those persons from exercising their rights under the Constitution and laws of this state and the United States and any illegal act directed at other persons or their property because of those persons' political beliefs or political affiliations. (Code 1981, § 35-3-62, enacted by Ga. L. 1983, p. 393, § 1; Ga. L. 1984, p. 22, § 35; Ga. L. 1987, p. 3, § 35.)

35-3-63. Creation of task force; purposes.

There is established a special Antiterrorism Task Force within the Georgia Bureau of Investigation. This Antiterrorism Task Force shall operate independently of any other investigative operations within the Georgia Bureau of Investigation and shall devote itself to the tasks of identifying, investigating, arresting, and prosecuting individuals or groups of individuals who perform terroristic acts against a person or his residence on the basis of such person's race, national origin, or religious persuasion. (Code 1981, § 35-3-63, enacted by Ga. L. 1983, p. 393, § 1; Ga. L. 1984, p. 22, § 35.)

35-3-64. Confidentiality of investigative reports and identity of agents.

All efforts shall be made to maintain the confidentiality of the investigative efforts of the Antiterrorism Task Force and the identity of agents who operate in undercover assignments. Information may, however, be shared with other law enforcement agencies when, in the sole discretion of the director, the sharing of such information would not compromise the successful completion of the investigation or cases being made. (Code 1981, § 35-3-64, enacted by Ga. L. 1983, p. 393, § 1; Ga. L. 2005, p. 599, § 5/SB 146.)

35-3-65. Authority to work with other law enforcement agencies.

The Antiterrorism Task Force shall be authorized to work with and seek the assistance of other law enforcement agencies when, in the sole discretion of the director, such assistance would not compromise the successful completion of the investigations or cases being made. (Code 1981, § 35-3-65, enacted by Ga. L. 1983, p. 393, § 1; Ga. L. 2005, p. 599, § 6/SB 146.)

ARTICLE 4

MISSING CHILDREN INFORMATION CENTER

35-3-80. Definitions.

As used in this article, the term:

(1) "Missing child" or "missing children" means a person or persons under the age of 18 years whose temporary or permanent residences are in, or are believed to be in, this state and who have been reported as missing to a law enforcement agency and whose location cannot be determined by that law enforcement agency.

(2) "Missing child report" means a report prepared on a form designed by the Georgia Bureau of Investigation for the use by law enforcement agencies and private citizens to report information about missing children to the Missing Children Information Center. (Code 1981, § 35-3-80, enacted by Ga. L. 1986, p. 659, § 1; Ga. L. 1988, p. 667, § 1.)

35-3-81. Establishment, development, maintenance, and operation of center; staff.

(a) There is authorized within the Georgia Bureau of Investigation the Missing Children Information Center. The center shall serve as a central repository of information regarding missing children and shall collect and disseminate such information as is necessary to assist in the location of missing children.

(b) Central responsibility for the development, maintenance, and operation of the center shall be vested in the supervisor of the center who shall be appointed by the director of the Georgia Bureau of Investigation.

(c) The supervisor of the center shall maintain the necessary staff along with support services to be procured within the Georgia state government to enable the effective and efficient performance of the duties and responsibilities assigned to the center in this article.

(d) All personnel of the center shall be administered according to appropriate special and standard schedules issued pursuant to the rules of the State Personnel Board. (Code 1981, § 35-3-81, enacted by Ga. L. 1986, p. 659, § 1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-54/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "issued pursuant to the rules of the State Personnel Board" for "by the State Personnel Administration" in subsection (d).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

35-3-82. Powers and duties.

(a) The center may:

(1) Establish a system of intrastate communication of information relating to missing children;

(2) Provide a centralized file for the exchange of information on missing children within the state;

(3) Interface and connect with the National Crime Information Center for the exchange of information on missing children and children suspected of interstate travel;

(4) Collect, process, maintain, and disseminate information on missing children and unidentified bodies and strive to maintain or disseminate only accurate and complete information;

(5) Cooperate with the State Board of Education in compiling lists of missing children in this state for distribution to local school districts;

(6) Compile annual statistics on the number of missing children;

(7) Develop recommendations for better reporting and use of computer systems;

(8) Provide assistance to local law enforcement agencies providing fingerprint programs for children;

(9) Circulate a monthly bulletin of missing children to all law enforcement agencies in the state;

(10) Assist local law enforcement agencies in establishing direct computer access to the Missing Children Information Center;

(11) Act as a liaison between private citizens and law enforcement agencies regarding appropriate procedures for handling and responding to missing children reports; and

(12) Establish a toll-free telephone number to assist individuals and agencies in the reporting of missing children and information relative to missing children.

(b) The center is authorized to join and participate in any network of state missing children centers or clearing-houses, specifically including but not limited to the National Center for Missing and Exploited Children. (Code 1981, § 35-3-82, enacted by Ga. L. 1986, p. 659, § 1.)

35-3-83. Missing child reports.

Upon the filing of a police report by the parent or guardian that a child is missing, the local law enforcement agency receiving such report

shall notify all of its on-duty law enforcement officers of the existence of the missing child report, communicate the report to all other law enforcement agencies having jurisdiction in the county and all law enforcement agencies of jurisdictions geographically adjoining that of the local law enforcement agency, and transmit the report to the Missing Children Information Center. (Code 1981, § 35-3-83, enacted by Ga. L. 1986, p. 659, § 1.)

35-3-84. Sending information to center.

Every law enforcement agency and the Georgia Bureau of Investigation shall transmit to the Missing Children Information Center any information which is acquired or collected pursuant to Code Section 35-1-8 or Code Section 35-3-4, which information would assist in the location of any missing child. (Code 1981, § 35-3-84, enacted by Ga. L. 1986, p. 659, § 1.)

35-3-85. Registration of related organizations.

Any public or private organization which makes lists of or maintains records on missing children as a primary activity of that organization and which seeks to operate in the State of Georgia shall register with the Missing Children Information Center. (Code 1981, § 35-3-85, enacted by Ga. L. 1986, p. 659, § 1.)

ARTICLE 5

GEORGIA BUREAU OF INVESTIGATION NOMENCLATURE

Editor's notes. — Ga. L. 1995, p. 925, § 1, not codified by the General Assembly, provides a statement of public policy relating to the prohibition of unauthorized use of Department of Public Safety and Georgia Bureau of Investigation Nomenclature or symbols.

35-3-100. Short title.

This article shall be known and may be cited as the "Georgia Bureau of Investigation Nomenclature Act of 1995." (Code 1981, § 35-3-100, enacted by Ga. L. 1995, p. 925, § 3.)

35-3-101. Definitions.

As used in this article, the term:

(1) "Badge" means any official badge used by employees of the Georgia Bureau of Investigation, either in the past or currently.

(2) "Bureau" means the Georgia Bureau of Investigation, its divisions, or operations under its command.

(3) "Director" means the director of the Georgia Bureau of Investigation.

(4) "Emblem" means any official patch or other emblem worn currently or formerly or used by the Investigative Division, the Division of Forensic Sciences, the Georgia Crime Information Center, or any other division or operation under the command of the bureau to identify the bureau or its employees.

(5) "Person" means any person, corporation, organization, or political subdivision of the State of Georgia.

(6) "Seal" means any official symbol, mark, or abbreviation which represents and is used by the Investigative Division, the Division of Forensic Sciences, the Georgia Crime Information Center, or any other division or operation under the command of the bureau to identify the bureau or its employees.

(7) "Willful violator" means any person who knowingly violates the provisions of this article. Any person who violates this article after being advised in writing by the director that such person's activity is in violation of this article shall be considered a willful violator and shall be considered in willful violation of this article. Any person whose agent or representative is a willful violator and who has knowledge of the violation by the agent or representative shall also be considered a willful violator and in willful violation of this article unless, upon learning of the violation, he or she immediately terminates the agency or other relationship with such violator. (Code 1981, § 35-3-101, enacted by Ga. L. 1995, p. 925, § 3; Ga. L. 2004, p. 626, § 1.)

35-3-102. Permission required for use of bureau nomenclature.

Whoever, except with the written permission of the director, knowingly uses the words "Georgia Bureau of Investigation," "GBI," "agent of the Georgia Bureau of Investigation," "Division of Forensic Sciences," "DOFS," "Georgia Crime Information Center," "GCIC," or "State Crime Lab" in referring to Georgia's state crime lab in connection with any advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production is approved, endorsed, or authorized by or associated with the bureau shall be in violation of this article. (Code 1981, § 35-3-102, enacted by Ga. L. 1995, p. 925, § 3; Ga. L. 2004, p. 626, § 2.)

35-3-103. Permission required for use of bureau symbols.

Any person who uses or displays any symbol, including any emblem, seal, or badge, current or historical, used by the bureau without written permission from the director shall be in violation of this article. (Code 1981, § 35-3-103, enacted by Ga. L. 1995, p. 925, § 3.)

35-3-104. Procedures for seeking permission to use bureau nomenclature or symbols.

Any person wishing permission to use either bureau nomenclature or symbols may request such permission in writing to the director. The director shall serve notice on the requesting party within 15 calendar days after receipt of the request of his or her decision on whether the person may use the nomenclature or the symbol. If the director does not respond within the 15 day time period, then the request is presumed to have been denied. The grant of permission under Code Section 35-3-102 or 35-3-103 shall be in the discretion of the director under such conditions as the director may impose. If the director denies such request and the person making such request reasonably believes that the director has acted in bad faith or based on an illegal motive, then the person may, within 15 days after the person's request was denied or granted on limited terms, file an appeal with the Board of Public Safety. The matter will then be considered before the board, but the burden will be with the person making the request to show that the request was improperly denied or limited. (Code 1981, § 35-3-104, enacted by Ga. L. 1995, p. 925, § 3.)

35-3-105. Injunction against violations.

Whenever there shall be an actual or threatened violation of Code Section 35-3-102 or 35-3-103, the director shall have the right to apply to the Superior Court of Fulton County or to the superior court of the county of residence of the violator for an injunction to restrain the violation. (Code 1981, § 35-3-105, enacted by Ga. L. 1995, p. 925, § 3.)

35-3-106. Civil penalties.

In addition to any other relief or sanction for a violation of Code Section 35-3-102 or 35-3-103, where the violation is willful, the director shall be entitled to collect a civil penalty in the amount of $500.00 for each violation. Further, when there is a finding of willful violation, the director shall be entitled to recover reasonable attorney's fees for bringing any action against the violator. The director shall be entitled to seek civil sanctions in the Superior Court of Fulton County or in the county of residence of the violator. (Code 1981, § 35-3-106, enacted by Ga. L. 1995, p. 925, § 3.)

35-3-107. Damage suits against violators.

Any person who has given money or any other item of value to another person due in part to such person's use of bureau nomenclature or symbols in violation of this article may maintain a suit for damages against the violator. Where it is proven that the violation was willful, the victim shall be entitled to recover treble damages, punitive damages, and reasonable attorney's fees. (Code 1981, § 35-3-107, enacted by Ga. L. 1995, p. 925, § 3.)

35-3-108. Criminal penalties.

Any person who violates the provisions of this article shall be guilty of a felony and upon conviction thereof shall be subject to a fine of not less than $1,000.00 nor more than $5,000.00 or to imprisonment for not less than one and not more than five years, or both. Each violation shall constitute a separate offense. (Code 1981, § 35-3-108, enacted by Ga. L. 1995, p. 925, § 3.)

ARTICLE 6

DIVISION OF FORENSIC SCIENCES

Editor's notes. — Ga. L. 1997, p. 1421, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Forensic Sciences Act of 1997'."

Ga. L. 1997, p. 1421, § 11 was codified by the General Assembly in 1998. For the codification of subsection (a) of Ga. L. 1997, p. 1421, § 11, see subsection (h) of Code Section 45-16-22. For the codification of subsection (b) of Ga. L. 1997, p. 1421, § 11, see Code Section 45-16-49.

35-3-150. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Public Safety.

(2) "Crime lab" or "state crime lab" means the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(3) "Director" means the director of the Georgia Bureau of Investigation.

(4) "Division" means the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(5) "Division director" means the director of the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(6) "Independent test" means a forensic analysis of evidence in the custody and possession of the state or any political subdivision or authority thereof conducted at the request of or on behalf of any

person other than a prosecuting attorney, law enforcement officer, or other authorized agent of the state or which are ordered conducted by a court at the request of an accused.

(7) "Regional medical examiner" shall have the same meaning as defined in paragraph (13) of Code Section 45-16-21.

(8) "Rule" or "rules" means a rule or regulation adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 35-3-150, enacted by Ga. L. 1997, p. 1421, § 3.)

35-3-151. Responsibilities.

The Division of Forensic Sciences of the Georgia Bureau of Investigation:

(1) Shall provide a state-wide system of laboratories dedicated to conducting forensic analysis of evidence submitted to the laboratory by law enforcement agencies, prosecuting attorneys, coroners, and medical examiners;

(2) Shall provide forensic services to the criminal justice system for the examination and analysis of evidence in the areas of medical examiner inquiries, latent fingerprints, photography, questioned documents, firearms and weapons, trace evidence, implied consent, blood alcohol, toxicology, chemistry, drugs, serology, DNA, and such other areas as the director may authorize or the board shall direct;

(3) Shall establish standards for the identification, collection, transportation, and analysis of forensic evidence;

(4) Shall facilitate independent testing or analysis of evidence within the possession, custody, or control of the division as provided in paragraph (3) of subsection (a) of Code Section 17-16-4, relating to discovery in criminal cases;

(5) Shall provide for and establish uniform fees as approved by the board to be paid to medical examiners, dentists, and other professionals for participating in medical examiners' inquiries or coroners' inquests pursuant to Article 2 of Chapter 16 of Title 45, known as the "Georgia Death Investigation Act";

(6) May assist in the training of law enforcement officers, prosecuting attorneys, coroners, and medical examiners as it relates to forensic sciences in cooperation with the Georgia Peace Officer Standards and Training Council, the Prosecuting Attorneys' Council of the State of Georgia, and the Georgia Coroner's Training Council, as appropriate; and

(7) May assist in the training of judges and attorneys as it relates to forensic sciences in cooperation with the Institute of Continuing

Judicial Education of Georgia and the Institute of Continuing Legal Education, as appropriate. (Code 1981, § 35-3-151, enacted by Ga. L. 1997, p. 1421, § 3.)

JUDICIAL DECISIONS

Cited in State v. Bowen, 274 Ga. 1, 547 S.E.2d 286 (2001).

35-3-152. Appointment, powers, and responsibilities of division director.

(a) Responsibility for the development, maintenance, and operations of the division shall be vested in the division director.

(b) The division director shall be appointed by the director of the Georgia Bureau of Investigation.

(c) The division director may, with the approval of the board, establish such advisory panels as may be necessary to assist the director to maintain and improve quality control and customer satisfaction.

(d) The division director shall appoint and maintain the necessary professional and support staff to enable the division to carry out its duties and responsibilities effectively and efficiently.

(e) The division director may designate one or more members of the division staff as the official custodians of the records of the division. (Code 1981, § 35-3-152, enacted by Ga. L. 1997, p. 1421, § 3.)

35-3-153. Chief medical examiner office created; appointment; responsibilities.

(a) Within the division there shall be an office of chief medical examiner.

(b) The chief medical examiner shall be appointed by the director. No person may be the chief medical examiner unless that person at the time of appointment is a pathologist certified in forensic pathology by the American Board of Pathology.

(c) It shall be the duty of the chief medical examiner to:

(1) Establish death investigation regions throughout the state and establish policies concerning the requirements for appointment of regional medical examiners to oversee death investigation activities in each established region;

(2) Appoint regional medical examiners;

(3) Employ forensic consultants and other independent contractors with the approval of the division director;

(4) Organize and conduct regular educational sessions as may be needed for medical examiners and coroners in the state in cooperation with the Georgia Coroner's Training Council and the Georgia Police Academy;

(5) Maintain permanent death investigation records for all jurisdictions in the state;

(6) Establish death investigation guidelines for coroners and medical examiners; and

(7) Cooperate with other state agencies, as appropriate, to ensure public health and safety.

(d) If there is a vacancy in the office of chief medical examiner or the chief medical examiner is disqualified or otherwise unable to perform the duties of said office, the division director shall be authorized to perform the duties of chief medical examiner. (Code 1981, § 35-3-153, enacted by Ga. L. 1997, p. 1421, § 3.)

35-3-154. Division requirements.

The division shall:

(1) Establish written standards and procedures for the administration of forensic testing. The division shall retain a copy of any procedure adopted pursuant to this paragraph which is modified for a period of five years from the date of its being superseded by the modification;

(2) Adopt rules and regulations as required by law; and

(3) In cooperation with the Georgia Peace Officer Standards and Training Council, provide for the training and certification of operators of such breath test equipment. A copy of such operator's certificate shall be prima-facie evidence in any civil, criminal, or administrative proceeding that such operator was qualified to operate such equipment. (Code 1981, § 35-3-154, enacted by Ga. L. 1997, p. 1421, § 3.)

Administrative rules and regulations. — Implied consent, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Bureau of Investigation, Chapter 92-3.

JUDICIAL DECISIONS

Application to blood alcohol tests. — Under O.C.G.A. § 35-3-154, department of forensic sciences need not administratively approve the use of the gas chromatograph or standards for the gas chromatograph's operation and maintenance in order for results of the tests to be admissible. Price v. State, 269 Ga. 222,

498 S.E.2d 262 (1998).

Cited in State v. Bowen, 274 Ga. 1, 547 S.E.2d 286 (2001).

35-3-154.1. Admission of reports from state crime laboratory.

(a) A copy of a report of the methods and findings of any examination or analysis conducted by an employee of the state crime laboratory or an employee of a laboratory with which the state crime laboratory has a contract for the provision of laboratory or scientific examination or analysis, authenticated under oath, is prima-facie evidence in court proceedings in this state of the facts contained therein.

(b) The report shall have the effect as if the person who performed the analysis or examination had personally testified and shall have an affidavit of the employee stating:

(1) That he or she is certified to perform the requisite analysis or examination;

(2) His or her experience as a chemist or analyst and as an expert witness testifying in court; and

(3) That he or she conducted the tests shown on the report using procedures approved by the bureau and the report accurately reflects his or her opinion regarding the results.

(c) The prosecuting attorney shall serve a copy on the defendant's attorney of record, or on the defendant if pro se, prior to the first proceeding in which the report is to be used against the defendant.

(d) Any report under this Code section shall contain notice of the right to demand the testimony of the person signing the report.

(e) The defendant may object in writing any time after service of the report, but at least ten days prior to trial, to the introduction of the report. If objection is made, the judge shall require the employee to be present to testify. The state shall diligently investigate the witness's availability and report to the court. If the witness is not available on a timely basis, the court shall grant a continuance. (Code 1981, § 35-3-154.1, enacted by Ga. L. 2004, p. 626, § 2.A; Ga. L. 2005, p. 60, § 35/HB 95; Ga. L. 2005, p. 503, § 1/HB 347.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "state" was substituted for "State" in subsection (a); "stating:" was substituted for "stating that" at the end of the introductory paragraph in subsection (b); "That he" was substituted for "He" at the beginning of paragraphs (b)(1) and (b)(3); and "in which" was inserted in subsection (c).

35-3-155. Application of Administrative Procedure Act.

Unless otherwise specifically provided by law, technical, scientific, and similar processes, procedures, guidelines, standards, and methods for the collection, preservation, or testing of evidence adopted by the division shall not be subject to the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 35-3-155, enacted by Ga. L. 1997, p. 1421, § 3.)

JUDICIAL DECISIONS

Applicability to case arising before effective date of section. — O.C.G.A. § 35-3-155, which became effective May 1, 1997, was applicable to a case in which the traffic accident occurred in 1995, but the challenge to the section came before the court after May 1, 1997. Helmeci v. State, 230 Ga. App. 866, 498 S.E.2d 326 (1998); Love v. State, 271 Ga. 398, 517 S.E.2d 53 (1999).

Scope of section. — Exclusion from the Administrative Procedure Act requirements for technical standards and procedures for the collection and testing of evidence by O.C.G.A. § 35-3-155 includes the procedure by which an officer obtains a Division of Forensic Sciences certificate to operate an Intoximeter 5000. State v. Corriher, 243 Ga. App. 648, 533 S.E.2d 800 (2000).

Georgia Bureau of Investigation's rules. — Forensic Sciences Division of the Georgia Bureau of Investigation is exempt under O.C.G.A. § 35-3-155 from the requirement of O.C.G.A. § 50-13-3(b) that the division publish the division's rules for granting permits for the administration of breath, blood, and urine tests. State v. Bowen, 274 Ga. 1, 547 S.E.2d 286 (2001), reversing State v. Bowen, 245 Ga. App. 159, 537 S.E.2d 417 (2000).

Cited in Mowery v. State, 234 Ga. App. 801, 507 S.E.2d 821 (1998); Berkow v. State, 243 Ga. App. 698, 534 S.E.2d 433 (2000).

ARTICLE 6A

DNA SAMPLING, COLLECTION, AND ANALYSIS

Editor's notes. — Article 6A is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 264, § 1-1/SB 80, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Johnia Berry Act.'"

Law reviews. — For note on 2000 amendments of O.C.G.A. §§ 24-4-60 to 24-4-63, 24-4-65 (now O.C.G.A. §§/N 35-3-160 to 35-3-163, 35-3-165), see 17 Ga. St. U. L. Rev. 181 (2000).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Qualifying Child Witness to Testify, 35 POF2d 665.

Hair Analysis, 38 POF2d 377.

Foundation for DNA Fingerprint Evidence, 8 POF3d 749.

35-3-160. (Effective until January 1, 2013) Definitions; requirement for DNA analysis of bodily fluid obtained in noninvasive procedure for convicted felons; storage of profile in data bank.

(a) As used in this article, the term:

(1) "Department" means the Department of Corrections.

(2) "Division" means the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(3) "Detention facility" means a penal institution under the jurisdiction of the department used for the detention of persons convicted of a felony, including penal institutions operated by a private company on behalf of the department, inmate work camps, inmate boot camps, probation detention centers, and parole revocation centers. Such term shall also mean any facility operated under the jurisdiction of a sheriff used for the detention of persons convicted of a felony including a county jail or county correctional facility.

(b) Any person convicted of a felony offense who is held in a detention facility or placed on probation shall at the time of entering the detention facility or being placed on probation have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. The provisions and requirements of this Code section shall also apply to any person who has been convicted of a felony prior to July 1, 2011, and who currently is incarcerated in a detention facility, serving a probation sentence, or serving under the jurisdiction of the Board of Pardons and Paroles for such offense. It shall be the responsibility of the detention facility detaining or entity supervising a convicted felon to collect the samples required by this Code section and forward the sample to the division unless such sample has already been collected by the department or another agency or entity.

(c) The analysis shall be performed by the division. The division shall be authorized to contract with individuals or organizations for services to perform such analysis. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the bureau in a DNA data bank and shall be made available only as provided in Code Section 35-3-163. (Code 1981, § 24-4-60, enacted by Ga. L. 1992, p. 2034, § 1; Ga. L. 2000, p. 1075, § 1; Ga. L. 2004, p. 485, § 1; Ga. L. 2005, p. 60, § 24/HB 95; Ga. L. 2007, p. 408, § 1/HB 314; Code 1981, § 35-3-160, as redesignated by Ga. L. 2011, p. 264, § 2-1/SB 80.)

The 2011 amendment, effective May 11, 2011, redesignated former Code Section 24-4-60 as present Code Section 35-3-160, and rewrote this Code section.

Delayed effective date. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

Editor's notes. — Ga. L. 2000, p. 1075, § 6, not codified by the General Assembly, provides: "The provisions of this Act shall not be construed as requiring the Department of Corrections or the Georgia Bureau of Investigation to fully implement this Act prior to funds being appropriated or otherwise available for such purpose. If funds are not available, the director of the Georgia Bureau of Investigation or the director's designee shall be authorized to designate those offenses for which samples shall be analyzed."

Law reviews. — For article, "The Georgia Roundtable Discussion Model: Another Way to Approach Reforming Rape Laws," see 20 Ga. St. U. L. Rev. 565 (2004).

For note on 1992 enactment of this article, see 9 Ga. St. U. L. Rev. 260 (1992). For note, "Padgett v. Donald: Why Not So Special," see 57 Mercer L. Rev. 673 (2006).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160) did not authorize unreasonable searches in violation of the Fourth Amendment because the bodily intrusion of taking a blood or saliva sample was minimal, the state had a compelling interest in obtaining reliable and accurate identifying characteristics of individuals convicted of felonies, and those valid law enforcement interests outweighed a convicted felon's privacy interests; to the extent that probable cause or individualized suspicion was required to justify a search, the prisoners' felony convictions provided that justification. Padgett v. Ferrero, 294 F. Supp. 2d 1338 (N.D. Ga. 2003).

When prisoners were challenging the constitutionality of O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160), the defendants were entitled to summary judgment on the prisoners' privacy claims because the prisoners' right to privacy in the prisoners' identification, assuming one existed, was substantially outweighed by the interests of the state in having available a DNA database that could be used in solving crimes and exonerating the innocent. Padgett v. Ferrero, 294 F. Supp. 2d 1338 (N.D. Ga. 2003).

O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160) does not violate the Fourth Amendment or Ga. Const. 1983, Art. I, Sec. I, Para. XIII as Georgia's legitimate interest in creating a permanent identification record of convicted felons for law enforcement purposes outweighs the minor intrusion involved in taking prisoners' saliva samples and storing DNA profiles, given prisoners' reduced expectation of privacy in the prisoners' identities. Padgett v. Donald, 401 F.3d 1273 (11th Cir. 2005), cert. denied, 546 U.S. 820, 126 S. Ct. 352, 163 L. Ed. 2d 61 (2005).

Prisoners' challenge to the requirement in O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160) that incarcerated felons submit saliva samples for DNA profiling was without merit; the bodily intrusion required by the statute to obtain saliva samples for DNA profiling did not impinge their Fourteenth Amendment right to privacy. Padgett v. Donald, 401 F.3d 1273 (11th Cir. 2005), cert. denied, 546 U.S. 820, 126 S. Ct. 352, 163 L. Ed. 2d 61 (2005).

Although prisoners retain a right to bodily privacy under Ga. Const. 1983, Art. I, Sec. I, Para. I, the extraction of saliva required by O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160) did not violate that right because the statute promotes law enforcement, and is narrowly tailored to promote that purpose by requiring DNA profiling on a limited population of incarcerated felons and forbidding release of the DNA profiles except for law enforcement purposes. Padgett v. Donald, 401 F.3d 1273 (11th Cir. 2005), cert. denied, 546 U.S. 820, 126 S. Ct. 352, 163 L. Ed. 2d 61 (2005).

Classification of subjecting convicted felons but not convicted misdemeanants to the DNA identification process is ratio-

nally related to the Georgia legislature's legitimate law enforcement purpose of creating a permanent identification record of convicted felons because the statute encompasses all convicted felons whose crimes and/or past histories were serious enough to warrant a sentence to confinement, as opposed to lesser punishment, and the legislature acted reasonably and not arbitrarily when the legislature focused on those convicted felons who are housed in a correctional facility where DNA samples can be efficiently and economically obtained. As a result, O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160) rationally relates to the legitimate state interest the statute is intended to promote and does not violate equal protection. Quarterman v. State, 282 Ga. 383, 651 S.E.2d 32 (2007).

O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160) does not violate the Fourth Amendment, the search and seizure provisions of the Georgia Constitution, or a convicted felons' rights to privacy under the United States or Georgia Constitutions. Quarterman v. State, 282 Ga. 383, 651 S.E.2d 32 (2007).

O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160) does not violate a defendant's right under the Georgia Constitution to not incriminate oneself as the privilege against self-incrimination in the United States Constitution does not protect an individual from government compulsion to provide blood or other biological samples and, although the right against self-incrimination in the Georgia Constitution has been construed liberally to limit the state from forcing an individual to affirmatively produce any evidence, oral or real, regardless of whether or not the evidence is testimonial, § 24-4-60 (now O.C.G.A. § 35-3-160) does not force a convicted felon to remove incriminating evidence but only to submit an incarcerated person's body for the purpose of having the evidence removed. Quarterman v. State, 282 Ga. 383, 651 S.E.2d 32 (2007).

O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160) does not violate the Eighth Amendment because the statute, requiring all convicted felons incarcerated in a state correctional facility to provide a sample for DNA analysis to determine the identification characteristics specific to the person, does not impose any form of punishment. Further, the purpose of establishing a DNA databank has been identified, and the methods for obtaining data provided by the statute are not excessive measures in response to the purpose, therefore, without any showing of the use of excessive force that might arguably state a claim of cruel and unusual punishment in obtaining DNA samples through involuntary means, the statute is deemed not penal and the means used to enforce the statute have not been shown to be malicious or grossly disproportionate to the refusal to comply with the statutory mandate. Quarterman v. State, 282 Ga. 383, 651 S.E.2d 32 (2007).

Application. — As a person who was convicted of a felony prior to July 1, 2000, and who on that date was incarcerated on such offense, the defendant was properly subject to compulsory blood sampling to establish a DNA profile for storage in the state's DNA data bank. Dingler v. State, 281 Ga. App. 721, 637 S.E.2d 120 (2006).

In convictions of aggravated sodomy, kidnapping, burglary, and aggravated assault, use of evidence comparing DNA on lip balm found at the crime scene with defendant's blood sample and with evidence retained from a prior rape prosecution that resulted in the defendant's acquittal did not violate O.C.G.A. § 24-4-60 et seq (now O.C.G.A. § 35-3-160). Fortune v. State, 300 Ga. App. 550, 685 S.E.2d 466 (2009).

Collection of DNA not unconstitutional on day of release from prison. — Trial court properly denied the defendant's motion to suppress the match of the defendant's DNA collected pursuant to O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160) on the day the defendant was released from prison for separate crimes because the DNA extraction was not a result of an illegal detention and the DNA seizure would have occurred regardless of the any illegal search or seizure; the correct calculation of the defendant's remaining sentence after the entry of an order vacating some of those convictions was a matter for the Department of Corrections, not the trial court, and the order directing the defendant's release was not necessar-

ily evidence that the defendant's detention after a certain date was illegal. The defendant's argument that the defendant was a probationer at the time of the search was meritless. Leftwich v. State, 299 Ga. App. 392, 682 S.E.2d 614 (2009), cert. denied, No. S09C2013, 2009 Ga. LEXIS 710 (Ga. 2009); cert. denied, U.S. , 130 S. Ct. 1913, 176 L. Ed. 2d 386 (2010).

Purpose of Georgia's DNA collection statute was not to punish, but to obtain a reliable, immutable form of identification for placement in a DNA database, and all the relevant evidence in the case indicated that the statute would not increase the punishment of anyone to whom the statute was applied. Padgett v. Ferrero, 294 F. Supp. 2d 1338 (N.D. Ga. 2003).

DNA samples from probationers. — Petitioner was not entitled to habeas relief because it was clear from the record that the petitioner was afforded an opportunity to develop the petitioner's Fourth Amendment claim in the trial court as well as on appeal; the fact that the petitioner disagreed with the state court's conclusions of state law with respect to the defendant's status at the time of the DNA extraction did not demonstrate that the defendant did not receive a full and fair opportunity to litigate the defendant's Fourth Amendment claim, and there was nothing clearly erroneous about the state court's factual findings that the petitioner was not a probationer at the time of the DNA extraction and that the saliva sample was taken upon petitioner being physically discharged from lawful custody. Leftwich v. Barrow, No. 1:11-CV-1015-WSD, 2011 U.S. Dist. LEXIS 109674 (N.D. Ga. Sept. 26, 2011).

Cited in Stephens v. State, 305 Ga. App. 339, 699 S.E.2d 558 (2010).

RESEARCH REFERENCES

ALR. — Validity, construction, and operation of state DNA database statutes, 76 ALR5th 239.

35-3-161. (Effective until January 1, 2013) Time and procedure for withdrawal of blood samples.

(a) Each sample required pursuant to Code Section 35-3-160 from persons who are to be incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving unit of the detention facility or at such other place as is designated by the department. Each sample required pursuant to Code Section 35-3-160 from persons who are to be released from a detention facility shall be withdrawn within the 12 months preceding such person's release at a place designated by the department. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn as a condition of probation. The division shall publish in its quality manuals the procedures for the collection and transfer of samples to such division pursuant to Code Section 35-3-154. Personnel at a detention facility shall implement the provisions of this Code section as part of the regular processing of offenders.

(b) Samples collected by oral swab or by a noninvasive procedure may be collected by any individual who has been trained in the procedure. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, graduate labo-

ratory technician, or phlebotomist shall withdraw any sample of blood to be submitted for analysis. No civil liability shall attach to any person authorized to take a sample as provided in this article as a result of the act of taking a sample from any person submitting thereto, provided the sample was taken according to recognized medically accepted procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood sample.

(c) Chemically clean sterile disposable needles shall be used for the withdrawal of all samples of blood. The containers for blood samples, oral swabs, and the samples obtained by noninvasive procedures shall be sealed and labeled with the subject's name, social security number, date of birth, race, and gender plus the name of the person collecting the sample and the date and place of collection. The containers shall be secured to prevent tampering with the contents. The steps set forth in this subsection relating to the taking, handling, identification, and disposition of samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be transported to the division not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162 and 35-3-163. (Code 1981, § 24-4-61, enacted by Ga. L. 1992, p. 2034, § 1; Ga. L. 2000, p. 1075, § 2; Code 1981, § 35-3-161, as redesignated by Ga. L. 2011, p. 264, § 2-1/SB 80.)

Delayed effective date. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

The 2011 amendment, effective May 11, 2011, redesignated former Code Section 24-4-61 as present Code Section 35-3-161; in subsection (a), substituted "Code Section 35-3-160" for "Code Section 24-4-60" twice, substituted "department" for "Department of Corrections" twice, inserted "of the detention facility" in the first sentence, substituted "detention facility" for "state correctional facility or private correctional facility" in the second sentence, substituted "division" for "Division of Forensic Sciences of the Georgia Bureau of Investigation" in the fourth sentence, and substituted "detention" for "Department of Corrections" in the last sentence; and in subsection (c), in the last sentence, substituted "division" for "Division of Forensic Sciences of the Georgia Bureau of Investigation" near the middle, and substituted "Code Sections 35-3-162 and 35-3-163" for "Code Sections 24-4-62 and 24-4-63" at the end.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "Code Sections" was substituted for "Code Section" in the last sentence of subsection (c).

Editor's notes. — Ga. L. 2000, p. 1075, § 6, not codified by the General Assembly, provides: "The provisions of this Act shall not be construed as requiring the Department of Corrections or the Georgia Bureau of Investigation to fully implement this Act prior to funds being appropriated or otherwise available for such purpose. If funds are not available, the director of the Georgia Bureau of Investigation or the director's designee shall be authorized to designate those offenses for which samples shall be analyzed."

RESEARCH REFERENCES

ALR. — Authentication of blood sample taken from human body for purposes other than determining blood alcohol content, 77 ALR5th 201.

35-3-162. (Effective until January 1, 2013) Procedure for analysis and storage of blood sample; use of remainder of sample not subjected to analysis; confidentiality of results.

Whether or not the results of an analysis are to be included in the data bank, the bureau shall conduct the DNA analysis in accordance with procedures adopted by the bureau to determine identification characteristics specific to the individual whose sample is being analyzed. The director or his or her designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the sample was received and examined, and a statement that the seal on the container containing the sample had not been broken or otherwise tampered with. The remainder of a sample submitted for analysis and inclusion in the data bank pursuant to Code Section 35-3-160 may be divided, if possible, labeled as provided for the original sample, and securely stored by the bureau in accordance with specific procedures of the bureau to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or for retesting by the bureau to validate or update the original analysis. A report of the results of a DNA analysis conducted by the bureau as authorized, including the identifying information, shall be made and maintained at the bureau. Except as specifically provided in this Code section and Code Section 35-3-163, the results of the analysis shall be securely stored and shall remain confidential. (Code 1981, § 24-4-62, enacted by Ga. L. 1992, p. 2034, § 1; Ga. L. 2000, p. 1075, § 3; Code 1981, § 35-3-162, as redesignated by Ga. L. 2011, p. 264, § 2-1/SB 80.)

Delayed effective date. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

The 2011 amendment, effective May 11, 2011, redesignated former Code Section 24-4-62 as present Code Section 35-3-162; deleted "of the Georgia Bureau of Investigation" following "The director" in the second sentence; substituted "Code Section 35-3-160" for "Code Section 24-4-60" in the third sentence; and substituted "Code Section 35-3-163" for "Code Section 24-4-63" near the middle of the last sentence.

Editor's notes. — Ga. L. 2000, p. 1075, § 6, not codified by the General Assembly, provides: "The provisions of this Act shall not be construed as requiring the Department of Corrections or the Georgia Bureau of Investigation to fully implement this Act prior to funds being appropriated or otherwise available for such purpose. If funds are not available, the director of the Georgia Bureau of Investigation or the

director's designee shall be authorized to designate those offenses for which samples shall be analyzed."

RESEARCH REFERENCES

ALR. — Authentication of blood sample taken from human body for purposes other than determining blood alcohol content, 77 ALR5th 201.

35-3-163. (Effective until January 1, 2013) Dissemination of information in data bank to law enforcement officials; comparison of profile; request for search; separate statistical data base authorized; fee for search and comparative analysis.

(a) It shall be the duty of the bureau to receive samples and to analyze, classify, and file the results of DNA identification characteristics of samples submitted pursuant to Code Section 35-3-160 and to make such information available as provided in this Code section. The results of an analysis and comparison of the identification of the characteristics from two or more biological samples shall be made available directly to federal, state, and local law enforcement officers upon a request made in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the bureau.

(b) Upon request from a prosecutor or law enforcement agency, the bureau may compare a DNA profile from an analysis of a sample from a suspect in a criminal investigation where the sample was obtained through a search warrant, consent of the suspect, court order, or other lawful means to DNA profiles lawfully collected and maintained by the bureau. The bureau shall not add a DNA profile of any such suspect to any DNA data bank except upon conviction as provided in this article.

(c)(1) Upon his or her request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank. Only when a sample or DNA profile supplied by the requestor satisfactorily matches the requestor's profile in the data bank shall the existence of data in the data bank be confirmed or identifying information from the data bank be disseminated.

(2) The name of the convicted felon whose profile is contained in the data bank may be related to any other data bases which are constructed for law enforcement purposes and may be disseminated only for law enforcement purposes.

(3) Upon a showing by the accused in a criminal proceeding that access to the DNA data bank is material to the investigation, preparation, or presentation of a defense at trial or in a postconviction proceeding, a superior court having proper jurisdiction over such criminal proceeding shall direct the bureau to compare a DNA profile which has been generated by the accused through an independent test against the data bank, provided that such DNA profile has been generated in accordance with standards for forensic DNA analysis adopted pursuant to 42 U.S.C. Section 14131.

(d) The bureau shall develop procedures governing the methods of obtaining information from the data bank in accordance with this Code section and procedures for verification of the identity and authority of the requestor. The bureau shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

(e) The bureau may create a separate statistical data base comprised of DNA profiles of samples of persons whose identity is unknown. Nothing in this Code section or Code Section 35-3-164 shall prohibit the bureau from sharing or otherwise disseminating the information in the statistical data base with law enforcement or criminal justice agencies within or outside the state.

(f) The bureau may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law enforcement agency outside of this state. (Code 1981, § 24-4-63, enacted by Ga. L. 1992, p. 2034, § 1; Ga. L. 2000, p. 1075, § 4; Ga. L. 2008, p. 252, § 1/SB 430; Code 1981, § 35-3-163, as redesignated by Ga. L. 2011, p. 264, § 2-1/SB 80.)

Delayed effective date. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

The 2011 amendment, effective May 11, 2011, redesignated former Code Section 24-4-63 as present Code Section 35-3-163; substituted "Code Section 35-3-160" for "Code Section 24-4-60" in the first sentence of subsection (a); substituted "felon" for "offender" in paragraph (c)(2); in paragraph (c)(3), substituted "the accused in a criminal proceeding" for "the defendant in a criminal case", substituted "postconviction proceeding" for "motion for a new trail", substituted "proceeding" for "case", substituted "accused" for "defendant", and deleted ", as amended" following "Section 14131" at the end; substituted "Code Section 35-3-164" for "Code Section 24-4-64" in subsection (e); and substituted "this state" for "the state" at the end of subsection (f).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "identity" was substituted for "identify" in the first sentence in subsection (d).

Editor's notes. — Ga. L. 2000, p. 1075, § 6, not codified by the General Assembly, provides: "The provisions of this Act shall not be construed as requiring the Department of Corrections or the Georgia Bureau of Investigation to fully implement this Act prior to funds being appropriated or otherwise available for such purpose. If funds are not available, the director of the Georgia Bureau of Investigation or the

director's designee shall be authorized to designate those offenses for which samples shall be analyzed."

U.S. Code. — The reference to 42 U.S.C. Section 14131, in this Code section, refers to provisions on quality assurance and proficiency testing standards for forensic DNA.

Law reviews. — For note, "A Modern Day Arthur Dimmesdale: Public Notification When Sex Offenders Are Released into the Community," see 12 Ga. St. U. L. Rev. 1187 (1995). For note, "Padgett v. Donald: Why Not So Special," see 57 Mercer L. Rev. 673 (2006).

JUDICIAL DECISIONS

Prisoners' right to privacy not violated. — Although prisoners retain a right to bodily privacy under Ga. Const. 1983, Art. I, Sec. I, Para. I, the extraction of saliva required by O.C.G.A. § 24-4-60 (now O.C.G.A. § 35-3-160) did not violate that right because the statute promotes law enforcement, and is narrowly tailored to promote that purpose by requiring DNA profiling on a limited population of incarcerated felons and forbidding release of DNA profiles except for law enforcement purposes. Padgett v. Donald, 401 F.3d 1273 (11th Cir. 2005), cert. denied, 546 U.S. 820, 126 S. Ct. 352, 163 L. Ed. 2d 61 (2005).

Match of DNA established probable cause for search warrant. — Match of defendant's DNA profile to DNA of semen collected at the scene of a crime established probable cause for a search warrant; defendant's argument that the state needed to further prove that the requirements and procedures set forth in O.C.G.A. §§ 24-4-60 through 24-4-65 (now O.C.G.A. §§ 35-3-160 through 35-3-165) were followed was without merit, and the trial court's order denying defendant's motion to suppress evidence was affirmed. Brown v. State, 270 Ga. App. 176, 605 S.E.2d 885 (2004).

Cited in Bickley v. State, 227 Ga. App. 413, 489 S.E.2d 167 (1997); Fortune v. State, 300 Ga. App. 550, 685 S.E.2d 466 (2009).

RESEARCH REFERENCES

ALR. — Validity, construction, and operation of state DNA database statutes, 76 ALR5th 239.

35-3-164. (Effective until January 1, 2013) Unlawful dissemination or use of information; obtaining sample without authority.

(a) Any person who, without authority, disseminates information contained in the data bank shall be guilty of a misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts to so use information in the data bank, knowing that such dissemination, receipt, or use is for a purpose other than as authorized by law, shall be guilty of a misdemeanor of a high and aggravated nature.

(b) Except for purposes of law enforcement or as authorized by this article, any person who, for purposes of having DNA analysis performed, obtains or attempts to obtain any sample submitted to the division for analysis shall be guilty of a felony. (Code 1981, § 24-4-64, enacted by Ga. L. 1992, p. 2034, § 1; Code 1981, § 35-3-164, as redesignated by Ga. L. 2011, p. 264, § 2-1/SB 80.)

Delayed effective date. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

The 2011 amendment, effective May 11, 2011, redesignated former Code Section 24-4-64 as present Code Section 35-3-164; and, in subsection (b), substituted "for purposes of law enforcement or as authorized by this article" for "as authorized by law" near the beginning, and substituted "division" for "Division of Forensic Services" near the end.

35-3-165. (Effective until January 1, 2013) Expungement of profile in data bank upon reversal and dismissal of conviction.

(a) A person whose DNA profile has been included in the data bank pursuant to this article may request that it be expunged on the grounds that the conviction on which the authority for including his or her DNA profile was based has been reversed and the case dismissed. The bureau shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of a written request that such data be expunged, pursuant to this Code section, and a certified copy of the court order reversing and dismissing the conviction.

(b) A DNA sample obtained in good faith shall be deemed to have been obtained in accordance with the requirements of this article and its use in accordance with this article is authorized until a court order directing expungement is obtained and submitted to the bureau. (Code 1981, § 24-4-65, enacted by Ga. L. 1992, p. 2034, § 1; Ga. L. 2000, p. 1075, § 5; Code 1981, § 35-3-165, as redesignated by Ga. L. 2011, p. 264, § 2-1/SB 80.)

Delayed effective date. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

The 2011 amendment, effective May 11, 2011, redesignated former Code Section 24-4-65 as present Code Section 35-3-165; designated the existing provisions as subsection (a); and added subsection (b).

Editor's notes. — Ga. L. 2000, p. 1075, § 6, not codified by the General Assembly, provides: "The provisions of this Act shall not be construed as requiring the Department of Corrections or the Georgia Bureau of Investigation to fully implement this Act prior to funds being appropriated or otherwise available for such purpose. If funds are not available, the director of the Georgia Bureau of Investigation or the director's designee shall be authorized to designate those offenses for which samples shall be analyzed."

JUDICIAL DECISIONS

Expungement right not violated. — In convictions of aggravated sodomy, kidnapping, burglary, and aggravated assault, in which the state used evidence comparing DNA on lip balm found at the crime scene with defendant's blood sample and with evidence retained from a prior rape prosecution, retention and use of the rape trial evidence did not violate the defendant's right to seek expungement of such evidence under O.C.G.A. § 24-4-65 (now O.C.G.A. § 35-3-165). Fortune v.

State, 300 Ga. App. 550, 685 S.E.2d 466 (2009).

ARTICLE 6A

DNA SAMPLING, COLLECTION, AND ANALYSIS

Delayed effective date. — Ga. L. 2011, p. 264, § 3-1/SB 80, revised Article 6A of Chapter 3 of Title 35, effective January 1, 2013. For the version of Article 6A effective until January 1, 2013, consult the preceding version of Article 6A. For the version effective January 1, 2013, see this version of Article 6A.

Code Commission notes. — Pursuant to Code Section 28-9-3, in 2011, the amendment of this article by Ga. L. 2011, p. 99, § 50/HB 24, was treated as repealed and superseded by Ga. L. 2011, p. 264, § 3-1/SB 80, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Editor's notes. — This article becomes effective January 1, 2013.

Ga. L. 2011, p. 264, § 1-1/SB 80, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Johnia Berry Act.'"

Ga. L. 2011, p. 264, § 3-1/SB 80, effective January 1, 2013, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 35-3-160 through 35-3-165, relating to DNA analysis upon conviction of certain sex offenses, and was based on Code 1981, §§ 24-4-60 — 24-4-65, enacted by Ga. L. 1992, p. 2034, § 1; Ga. L. 2000, p. 1075, §§ 1-5; Ga. L. 2004, p. 485, § 1; Ga. L. 2005, p. 60, § 24/HB 95; Ga. L. 2007, p. 408, § 1/HB 314; Ga. L. 2008, p. 252, § 1/SB 430; Ga. L. 2011, p. 99, § 50/HB 24; Code 1981, §§ 35-3-160 — 35-3-165, as redesignated by Ga. L. 2011, p. 264, § 2-1/SB 80.

35-3-160. (Effective January 1, 2013) DNA analysis upon conviction of certain sex offenses.

(a) As used in this article, the term:

(1) "Department" means the Department of Corrections.

(2) "Division" means the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(3) "Detention facility" means a penal institution under the jurisdiction of the department used for the detention of persons convicted of a felony, including penal institutions operated by a private company on behalf of the department, inmate work camps, inmate boot camps, probation detention centers, and parole revocation centers. Such term shall also mean any facility operated under the jurisdiction of a sheriff used for the detention of persons convicted of a felony including a county jail or county correctional facility.

(b) Any person convicted of a felony offense who is held in a detention facility or placed on probation shall at the time of entering the detention facility or being placed on probation have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification

characteristics specific to the person. The provisions and requirements of this Code section shall also apply to any person who has been convicted of a felony prior to July 1, 2011, and who currently is incarcerated in a detention facility, serving a probation sentence, or serving under the jurisdiction of the Board of Pardons and Paroles for such offense. It shall be the responsibility of the detention facility detaining or entity supervising a convicted felon to collect the samples required by this Code section and forward the sample to the division unless such sample has already been collected by the department or another agency or entity.

(c) The analysis shall be performed by the division. The division shall be authorized to contract with individuals or organizations for services to perform such analysis. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the bureau in a DNA data bank and shall be made available only as provided in Code Section 35-3-163. (Code 1981, § 35-3-160, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80.)

Editor's notes. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).

35-3-161. (Effective January 1, 2013) Time and procedure for withdrawal of blood samples.

(a) Each sample required pursuant to Code Section 35-3-160 from persons who are to be incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving unit of the detention facility or at such other place as is designated by the department. Each sample required pursuant to Code Section 35-3-160 from persons who are to be released from a detention facility shall be withdrawn within the 12 months preceding such person's release at a place designated by the department. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn as a condition of probation. The division shall publish in its quality manuals the procedures for the collection and transfer of samples to such division pursuant to Code Section 35-3-154. Personnel at a detention facility shall implement the provisions of this Code section as part of the regular processing of offenders.

(b) Samples collected by oral swab or by a noninvasive procedure may be collected by any individual who has been trained in the procedure. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any sample of blood to be submitted for analysis. No civil liability shall attach to any person

authorized to take a sample as provided in this article as a result of the act of taking a sample from any person submitting thereto, provided the sample was taken according to recognized medically accepted procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood sample.

(c) Chemically clean sterile disposable needles shall be used for the withdrawal of all samples of blood. The containers for blood samples, oral swabs, and the samples obtained by noninvasive procedures shall be sealed and labeled with the subject's name, social security number, date of birth, race, and gender plus the name of the person collecting the sample and the date and place of collection. The containers shall be secured to prevent tampering with the contents. The steps set forth in this subsection relating to the taking, handling, identification, and disposition of samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be transported to the division not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162 and 35-3-163. (Code 1981, § 35-3-161, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80.)

Editor's notes. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

35-3-162. (Effective January 1, 2013) Procedure for analysis and storage of blood sample; use of remainder of sample not subjected to analysis; confidentiality of results.

Whether or not the results of an analysis are to be included in the data bank, the bureau shall conduct the DNA analysis in accordance with procedures adopted by the bureau to determine identification characteristics specific to the individual whose sample is being analyzed. The director or his or her designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the sample was received and examined, and a statement that the seal on the container containing the sample had not been broken or otherwise tampered with. The remainder of a sample submitted for analysis and inclusion in the data bank pursuant to Code Section 35-3-160 may be divided, if possible, labeled as provided for the original sample, and securely stored by the bureau in accordance with specific procedures of the bureau to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or for retesting by the bureau to validate or update the original analysis. A report of the results of a DNA analysis conducted by the bureau as authorized,

including the identifying information, shall be made and maintained at the bureau. Except as specifically provided in this Code section and Code Section 35-3-163, the results of the analysis shall be securely stored and shall remain confidential. (Code 1981, § 35-3-162, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80.)

Editor's notes. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

35-3-163. (Effective January 1, 2013) Dissemination of information in data bank to law enforcement officials; comparison of profile; request for search; separate statistical data base authorized; fee for search and comparative analysis.

(a) It shall be the duty of the bureau to receive samples and to analyze, classify, and file the results of DNA identification characteristics of samples submitted pursuant to Code Section 35-3-160 and to make such information available as provided in this Code section. The results of an analysis and comparison of the identification of the characteristics from two or more biological samples shall be made available directly to federal, state, and local law enforcement officers upon a request made in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the bureau.

(b) Upon request from a prosecutor or law enforcement agency, the bureau may compare a DNA profile from an analysis of a sample from a suspect in a criminal investigation where the sample was obtained through a search warrant, consent of the suspect, court order, or other lawful means to DNA profiles lawfully collected and maintained by the bureau. The bureau shall not add a DNA profile of any such suspect to any DNA data bank except upon conviction as provided in this article.

(c)(1) Upon his or her request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank. Only when a sample or DNA profile supplied by the requestor satisfactorily matches the requestor's profile in the data bank shall the existence of data in the data bank be confirmed or identifying information from the data bank be disseminated.

(2) The name of the convicted felon whose profile is contained in the data bank may be related to any other data bases which are constructed for law enforcement purposes and may be disseminated only for law enforcement purposes.

(3) Upon a showing by the accused in a criminal proceeding that access to the DNA data bank is material to the investigation, preparation, or presentation of a defense at trial or in a postconviction proceeding, a superior court having proper jurisdiction over such criminal proceeding shall direct the bureau to compare a DNA profile which has been generated by the accused through an independent test against the data bank, provided that such DNA profile has been generated in accordance with standards for forensic DNA analysis adopted pursuant to 42 U.S.C. Section 14131.

(d) The bureau shall develop procedures governing the methods of obtaining information from the data bank in accordance with this Code section and procedures for verification of the identity and authority of the requestor. The bureau shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

(e) The bureau may create a separate statistical data base comprised of DNA profiles of samples of persons whose identity is unknown. Nothing in this Code section or Code Section 35-3-164 shall prohibit the bureau from sharing or otherwise disseminating the information in the statistical data base with law enforcement or criminal justice agencies within or outside the state.

(f) The bureau may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law enforcement agency outside of this state. (Code 1981, § 35-3-163, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80.)

Editor's notes. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

U.S. Code. — The reference to 42 U.S.C. Section 14131, in this Code section, refers to provisions on quality assurance and proficiency testing standards for forensic DNA.

35-3-164. (Effective January 1, 2013) Unlawful dissemination or use of information; obtaining sample without authority.

(a) Any person who, without authority, disseminates information contained in the data bank shall be guilty of a misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts to so use information in the data bank, knowing that such dissemination, receipt, or use is for a purpose other than as authorized by law, shall be guilty of a misdemeanor of a high and aggravated nature.

(b) Except for purposes of law enforcement or as authorized by this article, any person who, for purposes of having DNA analysis performed, obtains or attempts to obtain any sample submitted to the

division for analysis shall be guilty of a felony. (Code 1981, § 35-3-164, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80.)

Editor's notes. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

35-3-165. (Effective January 1, 2013) Expungement of profile in data bank upon reversal and dismissal of conviction.

(a) A person whose DNA profile has been included in the data bank pursuant to this article may request that it be expunged on the grounds that the conviction on which the authority for including his or her DNA profile was based has been reversed and the case dismissed. The bureau shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of a written request that such data be expunged, pursuant to this Code section, and a certified copy of the court order reversing and dismissing the conviction.

(b) A DNA sample obtained in good faith shall be deemed to have been obtained in accordance with the requirements of this article and its use in accordance with this article is authorized until a court order directing expungement is obtained and submitted to the bureau. (Code 1981, § 35-3-165, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80.)

Editor's notes. — For information as to the delayed repeal and reenactment of this article, see the delayed effective date note at the beginning of this article.

ARTICLE 7

STATE-WIDE ALERT SYSTEM FOR MISSING DISABLED ADULTS

Editor's notes. — Ga. L. 2008, p. 233, § 1/SB 202 redesignated former Article 7 of Chapter 3 of Title 38 as Article 7 of Chapter 3 of Title 35.

35-3-170. Short title.

This article shall be known and may be cited as the "Mattie's Call Act." (Code 1981, § 38-3-110, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-170, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

35-3-171. Definitions.

As used in this article, the term:

(1) "Alert system" means the state-wide "Mattie's Call" alert system for missing disabled adults.

(2) "Disabled adult" means an adult who is developmentally impaired or who suffers from dementia or some other cognitive impairment.

(3) "Local law enforcement agency" means a local law enforcement agency with jurisdiction over the investigation of a missing disabled adult. (Code 1981, § 38-3-111, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-171, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

35-3-172. Development and implementation of state-wide alert system for disabled adults.

With the cooperation of the office of the Governor, the Georgia Lottery Corporation, and other appropriate law enforcement agencies in this state, the bureau shall develop and implement a state-wide alert system to be activated on behalf of missing disabled adults. (Code 1981, § 38-3-112, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-172, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

35-3-173. Director to be state-wide coordinator for alert system.

(a) The director is the state-wide coordinator of the alert system.

(b) The director shall adopt rules and issue directives as necessary to ensure proper implementation of the alert system. The rules and directives shall include instructions on the procedures for activating and deactivating the alert system.

(c) The director shall prescribe forms for use by local law enforcement agencies in requesting activation of the alert system. (Code 1981, § 38-3-113, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-173, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

35-3-174. Time for reporting elopement of disabled person from personal care home and assisted living community.

The staff of personal care homes and assisted living communities shall call the local police department to report the elopement of any disabled person from the home within 30 minutes of the staff's receiving actual knowledge that such person is missing from the home. (Code 1981, § 38-3-113.1, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-174, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2011, p. 227, § 24/SB 178.)

The 2011 amendment, effective July 1, 2011, inserted "and assisted living communities" near the beginning of this Code section.

35-3-175. Recruitment of media, private and governmental entities, and others for assistance in developing and implementing alert system; contractual agreements for system support.

(a) The bureau shall recruit public and commercial television, radio, cable, print, and other media, private commercial entities, state or local governmental entities, the public, and other appropriate persons to assist in developing and implementing the alert system.

(b) The bureau may enter into agreements with participants in the alert system to provide necessary support for the alert system. (Code 1981, § 38-3-114, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-175, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

35-3-176. Criteria for activating alert system.

(a) On notification by a local law enforcement agency that a disabled adult is missing, the director shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) A local law enforcement agency believes that a disabled adult is missing;

(2) A local law enforcement agency believes that the disabled adult is in immediate danger of serious bodily injury or death;

(3) A local law enforcement agency confirms that an investigation has taken place that verifies the disappearance and eliminates alternative explanations for the disabled adult's disappearance; and

(4) Sufficient information is available to disseminate to the public that could assist in locating the disabled adult.

(b) The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the disabled adult did not leave a certain geographic location.

(c) The bureau may modify the criteria described by subsection (a) of this Code section as necessary for the proper implementation of the alert system. (Code 1981, § 38-3-115, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-176, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

35-3-177. Verification that criteria for activation have been met.

Before requesting activation of the alert system, a local law enforcement agency shall verify that the criteria described by subsection (a) of

Code Section 35-3-176 have been satisfied. The local law enforcement agency shall assess the appropriate boundaries of the alert, based on the nature of the disabled adult and the circumstances surrounding the disappearance. On verification of the criteria, the local law enforcement agency shall immediately contact the bureau to request activation and shall supply the necessary information on the forms prescribed by the director. (Code 1981, § 38-3-116, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-177, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

35-3-178. Obligations of agencies participating in alert system; participation of Georgia Lottery Corporation in disseminating alert information through retail establishments.

(a) A state agency participating in the alert system shall:

(1) Cooperate with the bureau and assist in developing and implementing the alert system;

(2) Establish a plan for providing relevant information to its officers, investigators, or employees, as appropriate, once the alert system has been activated; and

(3) Utilize a rapid response telephone system that alerts residents in a targeted area.

(b) The Georgia Lottery Corporation is directed to develop a method of notifying its vendors within an alert area of an alert in a manner designed to disseminate alert information to customers at its retail locations. (Code 1981, § 38-3-117, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-178, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

35-3-179. Termination of alert system with respect to particular disabled adult.

The director shall terminate any activation of the alert system with respect to a particular disabled adult if:

(1) The adult is located or the disappearance is otherwise resolved; or

(2) The director determines that the alert system is no longer an effective tool for locating and recovering the disabled adult. (Code 1981, § 38-3-118, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-179, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

35-3-180. Immunity from civil damages for dissemination of alert information.

(a) Any entity or individual participating in the "Mattie's call" alert system pursuant to this article shall not be liable for any civil damages arising from the dissemination of any alert generated pursuant to the "Mattie's call" alert system.

(b) Nothing in this article shall be construed to limit or restrict in any way any legal protection an individual or entity may have under any other law for disseminating any information. (Code 1981, § 38-3-119, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-180, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

ARTICLE 8

ALERT SYSTEMS FOR UNAPPREHENDED SUSPECTS

Editor's notes. — Ga. L. 2008, p. 233, § 1/SB 202 redesignated former Article 8 of Chapter 3 of Title 38 as Article 8 of Chapter 3 of Title 35.

35-3-190. State-wide alert system for unapprehended murder or rape suspects determined to be serious public threats.

(a) There is established a state-wide alert system known as "Kimberly's Call."

(b) As used in this article, the term "local law enforcement agency" means a local law enforcement agency with jurisdiction over the search for a suspect in a case of murder or rape.

(c) The director shall develop and implement a state-wide alert system to be activated when a suspect for the crime of murder as defined in Code Section 16-5-1 or rape as defined in Code Section 16-6-1 has not been apprehended and law enforcement personnel have determined that the suspect may be a serious threat to the public.

(d) The provisions of Code Sections 35-3-173, 35-3-175, and 35-3-178 shall also apply to "Kimberly's Call" as set forth in this Code section.

(e) On notification by a local law enforcement agency that a suspect in a case of murder or rape has not been apprehended and may be a serious threat to the public, the director shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) A local law enforcement agency believes that a suspect has not been apprehended;

(2) A local law enforcement agency believes that the suspect may be a serious threat to the public; and

(3) Sufficient information is available to disseminate to the public that could assist in locating the suspect.

(f) The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the suspect did not leave a certain geographic location.

(g) Before requesting activation of the alert system, a local law enforcement agency must verify that the criteria described by subsection (e) of this Code section have been satisfied. The local law enforcement agency shall assess the appropriate boundaries of the alert based on the nature of the suspect and the circumstances surrounding the crime.

(h) The director shall terminate any activation of the alert system with respect to a particular suspect if:

(1) The suspect is located or the incident is otherwise resolved; or

(2) The director determines that the alert system is no longer an effective tool for locating the suspect.

(i) Any entity or individual participating in the "Kimberly's Call" alert system pursuant to this Code section shall not be liable for any civil damages arising from the dissemination of any alert generated pursuant to the "Kimberly's Call" alert system. (Code 1981, § 38-3-120, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 38-3-130, as redesignated by Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-190, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "of this Code section" was inserted in the first sentence of subsection (f) (now subsection (g)).

Editor's notes. — Ga. L. 2007, p. 47, § 38(7)/SB 103, effective May 11, 2007, redesignated former Code Section 38-3-120 as present Code Section 38-3-130.

Ga. L. 2008, p. 233, § 1/SB 202, purported to amend and redesignate Code Section 38-3-120 as this Code section but actually amended and redesignated Code Section 38-3-130 as this Code section.

35-3-191. State-wide alert system for suspects of crimes involving death or serious injury of peace officer; alert system for missing peace officer.

(a) There is established a state-wide alert system known as "Blue Alert" which shall be developed and implemented by the director.

(b) As used in this Code section, the term:

(1) "Law enforcement agency" means a law enforcement agency with jurisdiction over the search for a suspect in a case involving the death or serious injury of a peace officer or an agency employing a peace officer who is missing in the line of duty.

(2) "Peace officer" means a person who is certified to exercise the powers of arrest.

(c) The "Blue Alert" system may be activated when a suspect for a crime involving the death or serious injury of a peace officer has not been apprehended and law enforcement personnel have determined that the suspect may be a serious threat to the public and also when a peace officer becomes missing while in the line of duty under circumstances warranting concern for such peace officer's safety.

(d) The provisions of Code Sections 35-3-173, 35-3-175, and 35-3-178 shall also apply to "Blue Alert" as set forth in this Code section.

(e) Upon notification by a law enforcement agency that a suspect in a case involving the death or serious injury of a peace officer has not been apprehended and may be a serious threat to the public, the director shall activate the "Blue Alert" system and notify appropriate participants in the "Blue Alert" system, as established by rule, if:

(1) A law enforcement agency believes that a suspect has not been apprehended;

(2) A law enforcement agency believes that the suspect may be a serious threat to the public; and

(3) Sufficient information is available to disseminate to the public that could assist in locating the suspect.

The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the suspect did not leave a certain geographic location.

(f) Upon notification by a law enforcement agency that a peace officer is missing while in the line of duty under circumstances warranting concern for such peace officer's safety, the director shall activate the "Blue Alert" system and notify appropriate participants in the "Blue Alert" system if sufficient information is available to disseminate to the public that could assist in locating the missing peace officer. The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the officer is within a certain geographic location.

(g) Before requesting activation of the "Blue Alert" system, a law enforcement agency shall verify that the criteria described by subsection (e) or (f) of this Code section have been satisfied. The law enforcement agency shall assess the appropriate boundaries of the alert based on the nature of the suspect and the circumstances surrounding the crime or the last known location of the missing peace officer.

(h) The director shall terminate any activation of the "Blue Alert" system with respect to a particular incident if:

(1) The suspect or peace officer is located or the incident is otherwise resolved; or

(2) The director determines that the "Blue Alert" system is no longer an effective tool for locating the suspect or peace officer.

Law enforcement agencies shall notify the director immediately when the suspect is located and in custody or the peace officer is found.

(i) Any entity or individual involved in the dissemination of a "Blue Alert" generated pursuant to this Code section shall not be liable for any civil damages arising from such dissemination. (Code 1981, § 35-3-191, enacted by Ga. L. 2010, p. 521, § 1/SB 397.)

Effective date. — This Code section became effective July 1, 2010.

Cross references. — Obstructing or hindering law enforcement officers, § 16-10-24.

CHAPTER 4

GEORGIA POLICE ACADEMY

Sec.
35-4-1. Short title.
35-4-2. Definitions.
35-4-3. Academy assigned to department for administrative purposes.
35-4-4. Powers and duties of board as to establishment, operation, and maintenance of academy generally.
35-4-5. Acceptance of gifts, grants, donations, property, and services by board.
35-4-6. Selection, powers, and duties of superintendent of academy.
35-4-7. Academy training programs available to police and other persons; fees and enrollment at academy; state, municipalities, and counties authorized to pay academy fees.
35-4-8. Training program for coroners and deputy coroners.
35-4-9. Attendance not required; academy training programs not to supersede other programs.

35-4-1. Short title.

This chapter shall be known as and may be cited as the "Georgia Police Academy Act." (Ga. L. 1962, p. 535, § 1.)

35-4-2. Definitions.

As used in this chapter, the term:

(1) "Academy" means the Georgia Police Academy.

(2) "Police officer" means any law enforcement officer charged with the duty of enforcing the criminal laws and ordinances of the state or of the counties or municipalities of the state who is employed by and compensated by the state or any county or municipality of the state or who is elected and compensated on a fee basis. The term shall include, but not be limited to, members of the department, municipal police, county police, sheriffs, deputy sheriffs, wardens, guards, agents and investigators of the State Forestry Commission, conservation rangers of the Department of Natural Resources, and agents of the Department of Revenue.

(3) "State" means the State of Georgia and any department, board, bureau, commission, or other agency thereof. (Ga. L. 1962, p. 535, § 2; Ga. L. 1975, p. 1175, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 1, 7. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 1. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 2.

C.J.S. — 62 C.J.S., Municipal Corpora-

tions, § 573 et seq. 67 C.J.S., Officers and Public Employees, §§ 2, 3. 81A C.J.S., States, § 1 et seq.

35-4-3. Academy assigned to department for administrative purposes.

The academy is assigned to the Department of Public Safety for administrative purposes only as prescribed in Code Section 50-4-3. (Ga. L. 1962, p. 535, § 5; Ga. L. 1975, p. 1175, § 5.)

35-4-4. Powers and duties of board as to establishment, operation, and maintenance of academy generally.

(a) The board is authorized to establish, operate, and maintain the Georgia Police Academy for the purpose of training police officers and others as provided in this chapter and to do all things and take whatever action is necessary to accomplish the purposes of this chapter, including, but not limited to, the establishment of training standards and programs and the promulgation of rules and regulations relative thereto.

(b) The board is authorized and directed to select a site for the academy. (Ga. L. 1962, p. 535, § 4; Ga. L. 1975, p. 1175, §§ 3, 6.)

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 68 et seq. 81A C.J.S., States, § 224 et seq.

35-4-5. Acceptance of gifts, grants, donations, property, and services by board.

The board is authorized to accept gifts, grants, donations, property, both real and personal, and services for the purposes of carrying out this chapter. (Ga. L. 1962, p. 535, § 5; Ga. L. 1975, p. 1175, § 5.)

35-4-6. Selection, powers, and duties of superintendent of academy.

(a) The board shall hire a superintendent of the academy whose duties shall be to administer the policies and programs of the board regarding the academy.

(b) The superintendent shall be responsible to the board for the management and control of the academy and shall report directly to the board.

(c) In administering the policies and programs of the board, the superintendent shall seek the assistance of the State Board of Education, which is authorized and directed to cooperate and work with the superintendent. (Ga. L. 1962, p. 535, § 5; Ga. L. 1975, p. 1175, §§ 4, 5; Ga. L. 2001, p. 311, § 1.)

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 68 et seq. 81A C.J.S., States, §§ 224 et seq., 252, 259 et seq.

35-4-7. Academy training programs available to police and other persons; fees and enrollment at academy; state, municipalities, and counties authorized to pay academy fees.

(a) Subject to rules and regulations prescribed by the board, the training programs at the academy shall be made available to all police officers and may also be made available to other persons who evidence interest in entering the law enforcement profession.

(b) The board is authorized to prescribe by rules and regulations fees to cover all or a part of the cost of furnishing such training.

(c) The state and municipalities and counties of the state are authorized to expend funds for the purpose of paying the fees provided for in subsection (b) of this Code section.

(d) The board is given full authority to decide who shall be allowed to enroll in the training programs at the academy. (Ga. L. 1962, p. 535, § 6; Ga. L. 1982, p. 3, § 35.)

OPINIONS OF THE ATTORNEY GENERAL

Employers authorized to pay fees charged. — Intent of this section is that each of the employers (state, county, or municipality) is authorized to pay the fees which the employers are charged by the police academy; funds obtained from the Governor's emergency fund cannot be used for the purpose of paying the fees of county and municipal police officers for attending the academy. 1965-66 Op. Att'y Gen. No. 66-18 (see O.C.G.A. § 35-4-7).

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 68 et seq. 81A C.J.S., States, §§ 224, 225.

35-4-8. Training program for coroners and deputy coroners.

Subject to rules and regulations prescribed by the board, the academy shall make available to all coroners and deputy coroners in the state at least once annually a training program of at least 16 hours of instruction including, but not limited to, the following: Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act"; all laws pertaining to the duties of coroners; and investigating technique. The board is authorized to charge such tuition as may be necessary to defray the expense of such training and is also authorized to accept appropriations from any governmental unit or gifts or grants for such purpose. (Ga. L. 1980, p. 543, § 4; Ga. L. 1992, p. 6, § 35.)

Cross references. — Further provisions regarding training program for coroners and deputy coroners, § 45-16-60 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 32.

C.J.S. — 18 C.J.S., Coroners and Medical Examiners, § 2.

35-4-9. Attendance not required; academy training programs not to supersede other programs.

It is not the intention of this chapter that it be mandatory that any police officer be required to attend the academy. The training program established at the academy shall not supersede any other training program for police officers but shall be separate and apart from any other training program for police officers. (Ga. L. 1962, p. 535, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 50 et seq. 73 Am. Jur. 2d, Statutes, § 61.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 22. 82 C.J.S., Statutes, §§ 372 et seq., 442.

CHAPTER 5

GEORGIA PUBLIC SAFETY TRAINING CENTER

Sec.
35-5-1. Short title.
35-5-2. Board authorized to establish, operate, and maintain center; powers of board as to selection and compensation of administrator.
35-5-3. Assignment to Department of Public Safety for administrative purposes; authorization to solicit and accept gifts, grants, donations, property, and services.
35-5-4. Powers and duties of administrator.
35-5-5. Center available for use by certain personnel; fees; enrollment; authorization for expenditure of funds; powers and duties.
35-5-6. Effect of chapter on powers of Board of Corrections, State Board of Pardons and Paroles, and Technical College System of Georgia.
35-5-7. Security police force.

Cross references. — Procedure for passing stationary authorized emergency vehicles, stationary towing or recovery vehicles, or stationary highway maintenance vehicles, § 40-6-16.

35-5-1. Short title.

This chapter shall be known and may be cited as the "Georgia Public Safety Training Center Act." (Ga. L. 1980, p. 429, § 1; Ga. L. 1993, p. 91, § 35.)

Cross references. — Use of retired unmarked pursuit cars for training, § 35-2-57.

35-5-2. Board authorized to establish, operate, and maintain center; powers of board as to selection and compensation of administrator.

(a) The Board of Public Safety is authorized:

(1) To establish, operate, and maintain the Georgia Public Safety Training Center for the purpose of providing facilities and programs for the training of state and local law enforcement officers, firefighters, correctional personnel, emergency medical personnel, and others; and

(2) To do all things and take any action necessary to accomplish such purpose, including, but not limited to, the promulgation of rules and regulations relative thereto.

(b) The board is authorized and directed to select a site for the center.

(c) The board shall select the administrator of the center and establish the compensation for the administrator.

(d) As used in this chapter, the term "emergency medical personnel" includes emergency medical technicians or emergency rescue specialists who are certified or seeking certification as emergency medical technicians, paramedics, tactical emergency medical officers, cardiac technicians, or other medical first responders under Chapter 11 of Title 31 and who are employed in the capacity for which they are certified or seeking certification. (Ga. L. 1980, p. 429, § 2; Ga. L. 2006, p. 1057, § 1/SB 581.)

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 68 et seq.

35-5-3. Assignment to Department of Public Safety for administrative purposes; authorization to solicit and accept gifts, grants, donations, property, and services.

(a) The center is assigned to the Department of Public Safety for administrative purposes only as prescribed in Code Section 50-4-3.

(b) The board is authorized to solicit and accept gifts, grants, donations, property, both real and personal, and services for the purpose of carrying out this chapter. (Ga. L. 1980, p. 429, § 4; Ga. L. 1982, p. 3, § 35.)

Cross references. — Use of retired unmarked pursuit cars for training, § 35-2-57.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 68.

35-5-4. Powers and duties of administrator.

The administrator of the center shall select the necessary staff and shall administer the policies and programs of the board regarding the center. The administrator shall be responsible to the board for the management and operation of the center and shall report directly to the board. (Ga. L. 1980, p. 429, § 3.)

Cross references. — Use of retired unmarked pursuit cars for training, § 35-2-57.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 68 et seq.

35-5-5. Center available for use by certain personnel; fees; enrollment; authorization for expenditure of funds; powers and duties.

(a) Subject to such rules and regulations as shall be prescribed by the board, the facilities of the center may be made available to all state and local law enforcement officers, firefighters, emergency medical personnel, and correctional personnel and may also be made available to other persons who evidence interest in entering the fields of law enforcement, fire fighting, emergency medical services, or corrections.

(b) The board is authorized to prescribe and collect such fees as are necessary to defray all or a portion of the cost of furnishing such training and the use of the facilities of the center.

(c) The state and counties and municipalities of this state are authorized to expend funds for the purpose of paying the fees assessed for use of the center. The board shall have the authority to determine who shall be allowed to enroll and participate in the training programs of the center and who shall be allowed to utilize the facilities of the center.

(d) Subject to such rules and regulations as shall be prescribed by the board, the Georgia Public Safety Training Center shall have the following powers and duties in connection with the training of peace officers, emergency medical personnel, and law enforcement support personnel:

(1) To train instructors authorized to conduct training of peace officers, emergency medical personnel, and law enforcement support personnel;

(2) To reimburse or provide for certain costs incurred in training peace officers, emergency medical personnel, and law enforcement support personnel employed or appointed by each agency, organ, or department of this state, counties, and municipalities to the extent that funds are appropriated for such purpose by the General Assembly. In the event sufficient funds are not appropriated for a fiscal year to fund the full cost provided for in this paragraph, then the amount which would otherwise be payable shall be reduced pro rata on the basis of the funds actually appropriated. As used in this paragraph,

the terms "cost" and "costs" shall not include travel or salaries of personnel undergoing training and shall be limited exclusively to the cost of tuition, meals, and lodging which are incurred in connection with such training;

(3) To expend funds appropriated or otherwise available to the center for paying the costs of training provided under subsection (a) of Code Section 35-8-20, other than travel expenses and salaries of police chiefs or department heads of law enforcement units and wardens of state institutions undergoing training, and shall expend such funds for purposes of compensating a training officer to administer the course of training and conduct any business associated with the training provisions of said Code Section 35-8-20;

(4) To expend funds appropriated or otherwise available to the center for paying the costs of training provided for under subsection (a) of Code Section 35-8-20.1, other than travel expenses and salaries of police chiefs or department heads of law enforcement units undergoing training, and shall expend such funds for purposes of compensating a training officer to administer the course of training and conduct any business associated with the training provisions of said Code Section 35-8-20.1;

(5) To expend funds appropriated or otherwise available to the center for paying the costs of training provided for under Chapter 11 of Title 31 for the initial certification training and continued training as needed by emergency medical personnel and shall expend such funds for purposes of compensating a training officer to administer the course of training and conduct any business associated with the training provisions of said chapter; and

(6) To administer and coordinate the training for communications officers with respect to the requirements of Code Section 35-8-23. The board shall be authorized to promulgate rules and regulations to facilitate the administration and coordination of training consistent with the provisions of said Code Section 35-8-23. The tuition costs of the training of communications officers shall be paid from funds appropriated to the center. (Ga. L. 1980, p. 429, § 5; Ga. L. 1997, p. 1488, § 2; Ga. L. 2006, p. 1057, § 2/SB 581.)

Cross references. — Use of retired unmarked pursuit cars for training, § 35-2-57.

35-5-6. Effect of chapter on powers of Board of Corrections, State Board of Pardons and Paroles, and Technical College System of Georgia.

Nothing in this chapter shall be considered as altering current state laws establishing the powers and authority of the Board of Corrections or the State Board of Pardons and Paroles. Furthermore, nothing in this chapter shall prevent the Technical College System of Georgia from providing any course of instruction including, but not limited to, instructional courses, certified training, advanced instruction, or classes for or pertaining to public safety first responders and emergency medical personnel. (Ga. L. 1980, p. 429, § 6; Ga. L. 1985, p. 283, § 1; Ga. L. 2006, p. 1057, § 3/SB 581; Ga. L. 2008, p. 335, § 5/SB 435.)

35-5-7. Security police force.

(a) The administrator of the center, with the approval of the board, is authorized to establish a security police force within the Georgia Public Safety Training Center.

(b) While in the performance of their duties on property of the Georgia Public Safety Training Center, such security police shall have the same law enforcement powers, including the power of arrest, as a law enforcement officer of the local government with police jurisdiction over such Georgia Public Safety Training Center. (Code 1981, § 35-5-7, enacted by Ga. L. 1987, p. 317, § 2.)

CHAPTER 6

STATE VICTIM SERVICES COMMISSION

Sec.
35-6-1. Creation and responsibility.
35-6-2. Membership of commission; terms of members; procedure.
35-6-3. Powers and duties of commission; ombudsman program.
35-6-4. Responsibility of state auditor; inspection of documentation.

Cross references. — Victim assistance coordinator, § 15-18-14.2. Funding for local victim assistance projects, T. 15, C. 21, A. 8. Victim compensation, T. 17, C. 15.

35-6-1. Creation and responsibility.

There is created the State Victim Services Commission. Such commission shall be responsible for developing a comprehensive state plan for assisting men, women, and children who are victims of crime through the distribution of the fine surcharges imposed for local victim assistance programs. (Code 1981, § 35-6-1, enacted by Ga. L. 2005, p. ES3, § 25.)

35-6-2. Membership of commission; terms of members; procedure.

(a) The State Victim Services Commission shall consist of 15 members as follows:

(1) The executive director of the Prosecuting Attorneys' Council of Georgia or his or her designee;

(2) The president of the Georgia Sheriffs' Association or his or her designee;

(3) The executive director of the Criminal Justice Coordinating Council or his or her designee;

(4) The chairperson of the Georgia Commission on Family Violence or his or her designee;

(5) The executive director of the Georgia Coalition Against Domestic Violence or his or her designee;

(6) The executive director of the Association County Commissioners of Georgia or his or her designee;

(7) The executive director of the Children's Advocacy Centers of Georgia or his or her designee;

(8) The executive director of the Georgia Superior Court Clerks' Cooperative Authority or his or her designee;

(9) The executive director of the Georgia Association of Homes and Services for Children or his or her designee;

(10) The executive director of the Georgia Municipal Association or his or her designee;

(11) The executive director of the Georgia Network to End Sexual Assault or his or her designee;

(12) A district attorney appointed by the Prosecuting Attorneys' Council of Georgia;

(13) One member appointed by the Governor;

(14) One member appointed by the Lieutenant Governor; and

(15) One member appointed by the Speaker of the House of Representatives.

(b) The term of appointment shall be three years for initial members appointed in accordance with the provisions of paragraphs (13) and (15) of subsection (a) of this Code section. The term of appointment shall be two years for initial members appointed in accordance with the provisions of paragraphs (12) and (14) of subsection (a) of this Code section. The letter of appointment shall set out the term for which each member is appointed. Thereafter, each member shall be appointed for a term of two years, and no member may serve more than two consecutive terms. All vacancies shall be filled for the unexpired term by an appointee of the original appointing official.

(c) The commission shall elect a chairperson, vice chairperson, and a secretary from among its members for terms of two years, and any member shall be eligible for successive election to such office by the commission.

(d) The commission shall hold regular meetings at such times and such places as it may deem necessary or convenient to enable the commission to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this chapter. Special meetings may be called by the chairperson or a majority of the members of the commission.

(e) A quorum for transacting business shall be determined by the members of the commission.

(f) The members of the commission shall serve without compensation or expense reimbursement. (Code 1981, § 35-6-2, enacted by Ga. L. 2005, p. ES3, § 25.)

35-6-3. Powers and duties of commission; ombudsman program.

(a) The State Victim Services Commission shall have the following powers and duties:

(1) To review the financial reports submitted pursuant to Code Section 15-21-132 concerning local victim assistance programs;

(2) To assess the degree of compliance of the courts in collecting and forwarding funds authorized to be collected pursuant to Article 8 of Chapter 21 of Title 15;

(3) To review and determine the extent to which county governing authorities collect funds from the courts and distribute such funds to victim services programs;

(4) To assess the extent to which such funds are utilized by such victim services programs to provide direct services to victims of crimes;

(5) To recommend changes in legislation that will ensure compliance in the collection, distribution, and use of victim assistance funds as needed; and

(6) To recommend as necessary and advisable rules and regulations for the collection and distribution of funds by court officers pursuant to Article 8 of Chapter 21 of Title 15.

(b) The commission may establish a victim services ombudsman program, provided that funds are appropriated by the General Assembly for such purpose or the commission receives sufficient funds from private grants or donations to fund such program. (Code 1981, § 35-6-3, enacted by Ga. L. 2005, p. ES3, § 25.)

35-6-4. Responsibility of state auditor; inspection of documentation.

(a) The state auditor is authorized and directed to assist the State Victim Services Commission in the discharge of its duties set forth in this chapter.

(b) Any victim assistance program, including programs operated by public officers, that receives funds pursuant to Article 8 of Chapter 21 of Title 15 shall make available to the State Victim Services Commission, the state auditor, or such other persons as the State Victim Services Commission may designate all books and records of all receipts, income, and expenditures of such funds. The commission and its designees shall be authorized to inspect and make abstracts of records of services provided to victims of crimes by any victim assistance program, including programs operated by public officers, that

receives funds pursuant to Article 8 of Chapter 21 of Title 15, provided that the commission and its designees shall not disclose the content of individually identifiable records that contain information that is privileged or confidential under the laws of this state or federal law. (Code 1981, § 35-6-4, enacted by Ga. L. 2005, p. ES3, § 25.)

CHAPTER 6A

CRIMINAL JUSTICE COORDINATING COUNCIL

Sec.
35-6A-1. Legislative intent.
35-6A-2. Creation; assignment to Georgia Bureau of Investigation.
35-6A-3. Membership; vacancies; membership not bar to holding public office.
35-6A-4. Election of chairperson and vice chairperson; meetings; minutes and records; rules.
35-6A-5. Compensation and expense allowance for members.
35-6A-6. Appointment of director; power and duties.
35-6A-7. Functions and authority of council.
35-6A-8. Limitations on authority of council.
35-6A-9. Preparation of budget requests; appropriations; gifts, grants, and donations of property and services.
35-6A-10. Incentives for using federal Department of Homeland Security's Secure Communities initiative; obligations of council.

Cross references. — Improvement of the criminal justice system, see T. 28, C. 8.

Editor's notes. — By resolution (Ga. L. 1986, p. 188), the General Assembly created the Governor's Commission on Black on Black Crime and directed the Criminal Justice Coordinating Council to gather information regarding black on black crime and to report its findings to the commission.

Administrative rules and regulations. — Criminal Justice Coordinating Council, Official Compilation of the Rules and Regulations of the State of Georgia, Title 144.

35-6A-1. Legislative intent.

The General Assembly finds that the high incidence of crime in Georgia is detrimental to the general welfare of the state and its citizens and that criminal justice efforts must be better coordinated, intensified, and made more effective in all components of the system and at all levels of government. The General Assembly, therefore, declares it to be the public policy of this state to provide the necessary leadership to coordinate the major components of the criminal justice system by establishing a state-wide coordinating body which represents all components and all levels of the criminal justice system. (Ga. L. 1981, p. 1306, § 1.)

35-6A-2. Creation; assignment to Georgia Bureau of Investigation.

There is established the Criminal Justice Coordinating Council of the State of Georgia which is assigned to the Georgia Bureau of Investigation for administrative purposes only, as prescribed in Code Section 50-4-3. (Ga. L. 1981, p. 1306, § 2; Ga. L. 2001, p. 311, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 23.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 12 et seq.

35-6A-3. Membership; vacancies; membership not bar to holding public office.

(a) The Criminal Justice Coordinating Council shall consist of 24 members and shall be composed as follows:

(1) The chairperson of the Georgia Peace Officer Standards and Training Council, the director of homeland security, the chairperson of the Judicial Council of Georgia, the chairperson of the Prosecuting Attorneys' Council of the State of Georgia, the commissioner of corrections, the chairperson of the Board of Corrections, the vice chairperson of the Board of Public Safety, the chairperson of the State Board of Pardons and Paroles, the State School Superintendent, the commissioner of community affairs, the president of the Council of Juvenile Court Judges, the chairperson of the Georgia Public Defender Standards Council, the chairperson of the Governor's Office for Children and Families, and the commissioner of juvenile justice or their designees shall be ex officio members of the council, as full voting members of the council by reason of their office; and

(2) Ten members shall be appointed by the Governor for terms of four years, their initial appointments, however, being four for four-year terms, two for three-year terms, and four for two-year terms. Appointments shall be made so that there are always on the council the following persons: one county sheriff, one chief of police, one mayor, one county commissioner, one superior court judge, four individuals who shall be, by virtue of their training or experience, knowledgeable in the operations of the criminal justice system of this state, and one individual who shall be, by virtue of his or her training and experience, knowledgeable in the operations of the entire spectrum of crime victim assistance programs delivering services to victims of crime. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the council, vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term.

(c) The initial terms for all 19 original members shall begin July 1, 1981. The initial term for the member added in 1985 shall begin July 1, 1985. The initial term for the member added in 1988 shall begin July 1,

1988. The initial term for the member added in 1989 shall begin July 1, 1989. The State School Superintendent shall be a member effective on July 1, 1989. The chairperson of the Georgia Public Defender Standards Council shall become a member on December 31, 2003.

(d) Membership on the council does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership. (Ga. L. 1981, p. 1306, § 3; Ga. L. 1983, p. 518, § 1; Ga. L. 1984, p. 22, § 35; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 544, § 5; Ga. L. 1988, p. 242, § 1; Ga. L. 1989, p. 288, § 1; Ga. L. 1989, p. 1245, § 1; Ga. L. 1990, p. 8, § 35; Ga. L. 1991, p. 435, § 1; Ga. L. 1992, p. 1983, § 35; Ga. L. 1997, p. 417, § 1; Ga. L. 1997, p. 1453, § 1; Ga. L. 1998, p. 128, § 35; Ga. L. 2003, p. 191, § 8; Ga. L. 2004, p. 988, § 1; Ga. L. 2008, p. 568, § 11/HB 1054.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, in paragraph (a)(1), "juvenile justice" was substituted for "the Department of Juvenile Justice " and "and" was added at the end.

Editor's notes. — Ga. L. 2008, p. 568, § 1/HB 1054, not codified by the General Assembly, provides: "This Act may be cited as the 'Children and Family Services Strengthening Act of 2008.'"

Ga. L. 2008, p. 568, § 2/HB 1054, not codified by the General Assembly, provides: "The General Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state's child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children's Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state's families in need."

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U. L. Rev. 21 (1992). For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 105 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 34, 35.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 20.

35-6A-4. Election of chairperson and vice chairperson; meetings; minutes and records; rules.

The business of the council shall be conducted in the following manner:

(1) The council shall annually elect a chairperson and a vice chairperson from among its membership. The offices of chairperson and vice chairperson shall be filled in such a manner that they are not held in succeeding years by representatives of the same component (law enforcement, courts, corrections) of the criminal justice system;

(2) The council shall meet at such times and places as it shall determine necessary or convenient to perform its duties. The council shall also meet on the call of the chairman or at the written request of three of its members;

(3) The council shall maintain minutes of its meetings and such other records as it deems necessary;

(4) The council shall adopt such rules for the transaction of its business as it shall desire and may appoint such committees as it considers necessary to carry out its business and duties, specifically including the power to transact and carry out through appointed committees the business of the council when serving pursuant to Chapter 15 of Title 17 as the Georgia Crime Victims Compensation Board. (Ga. L. 1981, p. 1306, § 4; Ga. L. 1999, p. 846, § 1; Ga. L. 2006, p. 72, § 35/SB 465.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 84 et seq., 101 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 38, 39.

35-6A-5. Compensation and expense allowance for members.

Members of the council shall serve without compensation but shall receive for each day of actual attendance of council meetings a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for use of a personal car in connection with such attendance. (Ga. L. 1981, p. 1306, § 5; Ga. L. 1987, p. 3, § 35; Ga. L. 2010, p. 875, § 1/SB 173.)

The 2010 amendment, effective July 1, 2010, substituted the present provisions of this Code section for the former provisions, which read: "Members of the council shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the council is in attendance at a meeting of such council, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Such expense and travel allowance shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance."

Cross references. — Expense allowance for members of General Assembly, § 45-7-4(a)(22). Legal mileage allowance, § 50-19-7.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 10 et seq., 23.

35-6A-6. Appointment of director; power and duties.

(a) The Governor shall appoint a director of the council who shall serve at the pleasure of the Governor.

(b) The director may contract with other agencies, public and private, or persons as the director deems necessary for the rendering and affording of such services, facilities, studies, research, and reports to the council as will best assist it to carry out its duties and responsibilities.

(c) The director may employ such other professional, technical, and clerical personnel as deemed necessary to carry out the purposes of this chapter. (Ga. L. 1981, p. 1306, § 6.)

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 20, 106 et seq.

35-6A-7. Functions and authority of council.

The council is vested with the following functions and authority:

(1) To cooperate with and secure cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this chapter;

(2) To prepare, publish in print or electronically, and disseminate fundamental criminal justice information of a descriptive and analytical nature to all components of the criminal justice system of this state, including law enforcement agencies, the courts, and correctional agencies;

(3) To serve as the state-wide clearing-house for criminal justice information and research;

(4) To maintain a research program in order to identify and define significant criminal justice problems and issues and effective solutions and to publish in print or electronically special reports as needed;

(5) In coordination and cooperation with all components of the criminal justice system of this state, to develop criminal justice legislative proposals and executive policy proposals reflective of the priorities of the entire criminal justice system of this state;

(6) To serve in an advisory capacity to the Governor on issues impacting the criminal justice system of this state;

(7) To coordinate high visibility criminal justice research projects and studies with a state-wide impact, which studies and projects cross traditional system component lines;

(8) To convene periodically state-wide criminal justice conferences involving key executives in the criminal justice system of this state and elected officials for the purpose of developing, prioritizing, and publicizing a policy agenda for the criminal justice system of this state;

(9) To provide for the interaction, communication, and coordination of all components of the criminal justice system of this state for the purpose of improving this state's response to crime and its effects;

(10) To administer gifts, grants, and donations for the purpose of carrying out this chapter;

(11) To promulgate rules governing the approval of victim assistance programs as provided for in Article 8 of Chapter 21 of Title 15; and

(12) To do any and all things necessary and proper to enable it to perform wholly and adequately its duties and to exercise the authority granted to it. (Ga. L. 1981, p. 1306, § 7; Ga. L. 1995, p. 260, § 4; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 875, § 2/SB 173.)

The 2010 amendments. — The first 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraphs (2) and (4). The second 2010 amendment, effective July 1, 2010, added "for the purpose of improving this state's response to crime and its effects" at the end of paragraph (9); added paragraph (10); and redesignated former paragraphs (10) and (11) as present paragraphs (11) and (12), respectively.

Law reviews. — For note on the 1995 amendment of this Code section, see 12 Ga. St. U. L. Rev. 89 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 48 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 106 et seq.

35-6A-8. Limitations on authority of council.

Notwithstanding any provision in this chapter to the contrary, the council shall not exercise any power, undertake any duty, or perform any function assigned by law to the Governor, the Attorney General, or any of the prosecuting or investigatory agencies at the state or local level. (Ga. L. 1981, p. 1306, § 8.)

35-6A-9. Preparation of budget requests; appropriations; gifts, grants, and donations of property and services.

(a) The council shall prepare a budget request in the same manner as any such request would be prepared by a budget unit under Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," and a separate appropriation shall be provided for the council in the general appropriations Act.

(b) The council shall be authorized to accept and use gifts, grants, and donations for the purpose of carrying out this chapter. The council shall also be authorized to accept and use property, both real and personal, and services, for the purpose of carrying out this chapter. Any funds, property, or services received as gifts, grants, or donations shall be kept separate and apart from any funds received by the Georgia Bureau of Investigation; and such funds, property, or services so received as gifts, grants, or donations shall be the property and funds of the council and, as such, shall not lapse at the end of each fiscal year but shall remain under the control and subject to the direction of the council to carry out this chapter. (Ga. L. 1981, p. 1306, § 9; Ga. L. 2010, p. 875, § 3/SB 173.)

The 2010 amendment, effective July 1, 2010, added the subsection (a) and (b) designations; and, in present subsection (b), substituted "shall be" for "is" in the first sentence, substituted "shall also be" for "is also" in the beginning of the second sentence, and, in the middle of the third sentence, substituted "Georgia Bureau of Investigation" for "Office of Planning and Budget" and substituted "as gifts" for "by gifts".

35-6A-10. Incentives for using federal Department of Homeland Security's Secure Communities initiative; obligations of council.

(a) Subject to available funding, the council shall establish a grant or incentive program for the provision of funds to local law enforcement agencies as incentive to such agencies to use the federal Department of Homeland Security's Secure Communities initiative or any successor or similar program and shall establish an incentive program and a grant program to offset the costs for local law enforcement agencies to enter into and implement memorandums of agreement with federal agencies under Section 287(g) of the federal Immigration and Nationality Act. In awarding such grants or incentives, the council shall be authorized to consider and give priority to local areas with the highest crime rates for crimes committed by illegal aliens.

(b) The council shall:

(1) Subject to available funding, provide incentive programs and grants to local law enforcement agencies for utilizing federal re-

sources and for entering into agreements with federal agencies for the enforcement of immigration law;

(2) Provide technical assistance to local governments and agencies for obtaining and qualifying for incentive programs and grant funds to utilize available federal resources and to enter into and implement such agreements provided for in subsection (a) of this Code section;

(3) Communicate information regarding the availability of federal resources and agreements provided for in subsection (a) of this Code section and the availability of related incentive programs and grant funds and post such information on the agency's official Internet website;

(4) Provide technical assistance and information regarding the process for contacting federal agencies, utilizing federal resources, and entering into agreements provided for in subsection (a) of this Code section and post such information on the agency's official Internet website; and

(5) Support state-wide campaigns and information programs in an effort to encourage every local law enforcement agency in this state to utilize federal resources and enter into agreements for the enforcement of state and federal immigration law. (Code 1981, § 35-6A-10, enacted by Ga. L. 2011, p. 794, § 11/HB 87.)

Effective date. — This Code section became effective July 1, 2011. See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 794, § 1/HB 87, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21/HB 87, not codified by the General Assembly, provides for severability, and provides, in part, that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22/HB 87, not codified by the General Assembly, provides, in part, that the enactment of this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

This Code section formerly pertained to the repeal of this chapter. The former Code section was based on Ga. L. 1981, p. 1306, § 11; and Ga. L. 1981 Ex. Sess., p. 8 and was repealed by Ga. L. 1983, p. 518, § 2, effective March 15, 1983.

Law reviews. — For article on the 2011 enactment of this article, 28 Ga. St. U. L. Rev. 35 (2011).

CHAPTER 7

ORGANIZED CRIME PREVENTION COUNCIL

Sec.
35-7-1 through 35-7-5. [Repealed].

35-7-1 through 35-7-5.

Reserved. Repealed by Ga. L. 2004, p. 988, § 2, effective May 17, 2004.

Editor's notes. — This chapter consisted of Code Sections 35-7-1 through 35-7-5, relating to the Organized Crime Prevention Council, and was based on Ga. L. 1980, p. 396, §§ 1 — 5; Ga. L. 1993, p. 91, § 35.

CHAPTER 8

EMPLOYMENT AND TRAINING OF PEACE OFFICERS

Sec.

35-8-1. Short title.

35-8-2. Definitions.

35-8-3. Establishment of Georgia Peace Officer Standards and Training Council; membership; organization; administrative assignment to Department of Public Safety.

35-8-4. Officers of council; quorum; minutes of meetings and records; reports to Governor and General Assembly.

35-8-5. Compensation of members of council.

35-8-6. Appointment of executive director of council; contracts for services; personnel; investigators; subpoenas; funding; gifts, grants, or donations.

35-8-7. Powers and duties of council generally.

35-8-7.1. Authority of council to refuse certificate to applicant or to discipline certified peace officer or exempt peace officer; grounds; restoration of certificate; emergency suspension of certification; notice of investigation.

35-8-7.2. Administrative procedure; hearings; review.

35-8-8. Requirements for appointment or certification of persons as peace officers and pre-employment attendance at basic training course; "employment related information" defined.

35-8-9. Completion of basic training course required; acceptance of other instruction; effect of failure to complete basic training requirements; limitation.

35-8-10. Applicability and effect of certification requirements generally; requirements as to exempt persons.

35-8-11. Basic course to be completed at schools certified by council.

Sec.

35-8-12. Certification to use speed detection devices; withdrawal or suspension of certificate.

35-8-13. Training and certification of police chaplains.

35-8-13.1. Training and certification of municipal probation officers.

35-8-14. Board of Corrections and State Board of Pardons and Paroles to establish training program for employees authorized to make arrests [Repealed].

35-8-15. Preparation and maintenance of employment records by law enforcement units and council; release of records.

35-8-16. Effect of standards and training requirements provided in chapter; adoption of additional requirements by law enforcement units.

35-8-17. Effect of peace officer's failure to comply with chapter generally; civil actions against noncomplying peace officers and law enforcement units.

35-8-18. Applicability of chapter to emergency peace officers.

35-8-19. Appointment of citizen of adjoining state as peace officer.

35-8-20. Training requirements for police chiefs, department heads, and wardens; effect of failure to fulfill training requirement; waiver of requirements.

35-8-20.1. Training for police chiefs and department heads appointed after June 30, 1999; waivers.

35-8-21. Training requirements for peace officers; waiver; exemption for retired peace officers.

35-8-22. Reimbursement of training expenses by subsequent employer of peace officer; collection procedure; required documentation.

35-8-23. Basic training course for communications officers; certification requirements; duties of council; rules and regulations.

Sec.
35-8-24. Training requirements for jail officers and juvenile correctional officers.
35-8-25. Training and certification of bomb technicians, explosive ordnance disposal technicians, and animal handlers; intergovernmental assistance agreements.
35-8-26. (For effective date, see note.) TASER and electronic control weapons; requirements for use; establishment of policies; training.

Cross references. — Basic training courses for sheriffs, § 15-16-3. Campus policemen generally, § 20-3-72 and T. 20, C. 8. Conservation rangers and deputy conservation rangers, § 27-1-16 et seq. Furnishing a copy of psychological or psychiatric evaluation to law enforcement officer upon request, § 31-33-7. Appointment and powers of county police, T. 36, C. 8. Powers and duties of investigators for state examining boards and office of joint-secretary, § 43-1-5.

Editor's notes. — By resolution (Ga. L. 1986, p. 1204), the General Assembly urged certain public organizations and state agencies to develop programs for the education and training of social services and criminal justice professionals in the areas of child abuse, sexual abuse, and sexual exploitation.

Administrative rules and regulations. — Regulations governing the Georgia Peace Officer Standards and Training Council, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Peace Officer Standards and Training Council, Chapter 464-1 et seq.

JUDICIAL DECISIONS

Noncompliance with conditions of Ga. L. 1970, p. 208, § 1 et seq. (see O.C.G.A. Ch. 8, T. 35), by express terms of Ga. L. 1970, p. 208, § 15 (see O.C.G.A. § 35-8-17), renders arrest unauthorized. The noncomplying peace officer, however, may be authorized to effect an arrest, under certain circumstances, as a private citizen. Mason v. State, 147 Ga. App. 179, 248 S.E.2d 302 (1978).

Cited in Tucker v. State, 131 Ga. App. 791, 207 S.E.2d 211 (1974); Crass v. State, 150 Ga. App. 374, 257 S.E.2d 909 (1979); Georgia Peace Officer Stds. & Training Council v. Mullis, 248 Ga. 67, 281 S.E.2d 569 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Construction with indemnification law. — General Assembly did not intend for the requirements of the Peace Officer Standards and Training Act to be grafted onto the indemnification law, O.C.G.A. § 45-9-80 et seq. 1983 Op. Att'y Gen. No. 83-12.

Deputy sheriff subject to chapter. — Deputy sheriff having responsibility for county jail and arrest power is subject to Ga. L. 1970, p. 208, § 1 et seq. (see O.C.G.A. Ch. 8, T. 35); further, a person cannot be so employed without the certificate required by Ga. L. 1970, p. 208, § 13 (see O.C.G.A. § 35-8-10). 1971 Op. Att'y Gen. No. U71-128.

Person who ostensibly appears to be a law enforcement officer and who is killed while on duty, but who has not complied with the Peace Officer Standards and Training Act, is nonetheless a law enforcement officer for the purposes of state indemnification. 1983 Op. Att'y Gen. No. 83-12.

Candidate for sheriff is not affected by this chapter. 1971 Op. Att'y Gen. No. U71-110 (see O.C.G.A. Ch. 8, T. 35).

Park security officers not authorized or required to be peace officers. — Security officers of the North Georgia Mountains Authority are neither required nor authorized to become certified peace

officers under this chapter. 1972 Op. Att'y Gen. No. 72-27 (see O.C.G.A. Ch. 8, T. 35).

State education board's security guards not "peace officers". — Since the State Board of Education cannot cloak the security guards it employs with a peace officer's power to make arrests, its security guards are not "peace officers" within the meaning of this chapter. 1978 Op. Att'y Gen. No. 78-3 (see O.C.G.A. Ch. 8, T. 35).

Campus policemen and other security personnel of University System institutions vested with the power to make arrests under O.C.G.A. § 20-3-72 are subject to the mandatory training requirements of O.C.G.A. Ch. 8, T. 35 and are consequently covered by the random drug testing provisions of O.C.G.A. § 45-20-90 et seq. 1990 Op. Att'y Gen. No. 90-11.

Use of same guards in both county correctional camps and county jails. — It is permissible under state law and the rules and regulations of the Department of Offender Rehabilitation (now Corrections) for same guards to be used to supervise inmates in both county correctional camps and county jails; however, certain practical considerations must be made concerning oaths, bonds, and this chapter. 1981 Op. Att'y Gen. No. U81-21 (see O.C.G.A. Ch. 8, T. 35).

Felony conviction disqualifying applicant not eliminated by pardon. — Pardon by the Board of Pardons and Paroles that relieves an individual convicted of a felony from civil and political disabilities does not eliminate such a conviction as one which would disqualify an applicant under this chapter. 1976 Op. Att'y Gen. No. 76-9 (see O.C.G.A. Ch. 8, T. 35).

Investigators employed by solicitor's office of juvenile court. — Investigators employed by the solicitor's office of the juvenile court may not be authorized by the solicitor to carry weapons and may not exercise the powers of a peace officer unless the individuals are certified as peace officers pursuant to O.C.G.A. Ch. 8, T. 35. 1990 Op. Att'y Gen. No. U90-22.

35-8-1. Short title.

This chapter shall be known and may be cited as the "Georgia Peace Officer Standards and Training Act." (Ga. L. 1970, p. 208, § 1.)

Law reviews. — For annual survey of labor and employment law, see 57 Mercer L. Rev. 251 (2005); 58 Mercer L. Rev. 211 (2006).

JUDICIAL DECISIONS

Records of private university's police force not subject to public records act. — Records of a campus police force of a private university were not subject to disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., as the university was a private institution that did not receive any funding from the state and the campus police were employees of that entity pursuant to the authority of O.C.G.A. § 20-8-2. The fact that the campus police performed a public function did not make their records public records. The fact that the campus police were given authority to perform certain functions by the Campus Policemen Act, O.C.G.A. § 20-8-1 et seq., and the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., did not make them officers or employees of a public office or agency for purposes of the Open Records Act. The Corp. of Mercer Univ. v. Barrett & Farahany, L.L.P., 271 Ga. App. 501, 610 S.E.2d 138 (2005).

Construction with Whistleblower Act. — When a port authority officer alleged that the officer was discharged after the officer complained that the port authority was violating the authority's own rules and O.C.G.A. § 35-8-1, the officer stated a cognizable claim under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4(a)(2), (d)(2). Pattee v. Ga. Ports Auth., 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

CPR certification not required. —

Sheriff's deputies and police officers were entitled to official immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d), as the deputies' and officers' failure to provide cardio-pulmonary resuscitation (CPR) to the son of the parents was discretionary, and no malice was shown; the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., and the departments for which the officers and deputies worked did not require the officers and deputies to maintain CPR certification or to carry CPR equipment and the officers and deputies were not certified to perform CPR, and, even if the deputies and officers moved people away who were trying to help the son, this did not show malice, as the deputies and officers were concerned the people might harm the son. Daley v. Clark, 282 Ga. App. 235, 638 S.E.2d 376 (2006).

Cited in Camp Legal Def. Fund, Inc. v. City of Atlanta, 451 F.3d 1257 (11th Cir. 2006).

35-8-2. Definitions.

As used in this chapter, the term:

(1) "Applicant" means a prospective peace officer who has not commenced employment or service with a law enforcement unit.

(2) "Candidate" means a peace officer who, having satisfied preemployment requirements, has commenced employment with a law enforcement unit but who has not satisfied the training requirement provided for in this chapter.

(3) "Council" means the Georgia Peace Officer Standards and Training Council.

(4) "Department head" means the chief executive or head of a state department or agency, a county, a municipality, or a railroad who is a peace officer and whose responsibilities include the supervision and assignment of one or more employees or the performance of administrative and managerial duties of a police agency or law enforcement unit. Such term does not include the Attorney General, the director of the Georgia Drugs and Narcotics Agency, a district attorney, a solicitor-general, a county or municipal fire chief, or peace officers employed exclusively as investigators of any such offices who do not exercise any law enforcement supervisory or managerial duties. The provisions of this paragraph shall not apply to any sheriff or to any head of any law enforcement unit within the office of sheriff.

(4.1) "Detention facility" means a municipal or county jail used for the detention of persons charged with or convicted of a felony, a misdemeanor, or a municipal or county ordinance, but shall not include a facility customarily used to hold one or more persons for a period not to exceed eight hours while any such person awaits processing, booking, court appearance, or release.

(5) "Emergency peace officers" means any peace officers who are employed or appointed to act as peace officers during an emergency or disaster which has been so declared by the chief executive officer of

the state and whose status as peace officers is intended to be temporary and for that limited purpose.

(5.1) "Jail officer" means any person who is employed or appointed by a county or a municipality and who has the responsibility of supervising inmates who are confined in a municipal or county detention facility.

(5.2) "Juvenile correctional facility" means a facility operated by the Department of Juvenile Justice and used for the detention of youth who are delinquent or who are alleged to be delinquent or a facility operated by the Department of Juvenile Justice used for the care, treatment, and rehabilitation of juvenile offenders.

(5.3) "Juvenile correctional officer" means any person employed or appointed by the Department of Juvenile Justice who has the primary responsibility for the supervision and control of youth confined in its programs and facilities.

(6) "Law enforcement support personnel" means persons, other than peace officers, whose primary employment with a law enforcement unit consists of performing functions directly related to the prevention, detection, or investigation of crime.

(7) "Law enforcement unit" means:

(A) Any agency, organ, or department of this state, a subdivision or municipality thereof, or a railroad whose primary functions include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime;

(B) The Office of Permits and Enforcement of the Department of Transportation, the Department of Juvenile Justice and its institutions and facilities for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by said department or institutions, and the office or section in the Department of Juvenile Justice in which persons are assigned who have been designated by the commissioner to investigate and apprehend unruly and delinquent children; and

(C) The Department of Corrections, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, and county correctional institutions for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by said department, board, or institutions.

(8) "Peace officer" means, for purposes of this chapter only:

(A) An agent, operative, or officer of this state, a subdivision or municipality thereof, or a railroad who, as an employee for hire or

as a volunteer, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public order, the protection of life and property, and the prevention, detection, or investigation of crime;

(B) An enforcement officer who is employed by the Department of Transportation in its Office of Permits and Enforcement and any person employed by the Department of Juvenile Justice who is designated by the commissioner to investigate and apprehend unruly and delinquent children;

(B.1) Personnel who are authorized to exercise the power of arrest, who are employed or appointed by the Department of Juvenile Justice, and whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent and unruly children in the department's institutions, facilities, or programs;

(C) Personnel who are authorized to exercise the power of arrest and who are employed or appointed by the Department of Corrections, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, county probation systems, and county correctional institutions; and

(D) An administrative investigator who is an agent, operative, investigator, or officer of this state whose duties include the prevention, detection, and investigation of violations of law and the enforcement of administrative, regulatory, licensing, or certification requirements of his or her respective employing agency.

Law enforcement support personnel are not peace officers within the meaning of this chapter, but they may be certified upon voluntarily complying with the certification provisions of this chapter.

(9) "Retired peace officer" means a retired law enforcement officer who, prior to his or her retirement from service with the state or a subdivision or municipality thereof, was a peace officer within the meaning of such term as defined in paragraph (8) of this Code section. A retired peace officer may be certified or registered upon voluntarily complying with the certification or registration provisions of this chapter. Such term shall also mean a retired law enforcement officer who retired from service with the United States who meets all criteria as specified by the council for such classification; provided, however, that such classification shall not exempt such officer from satisfying the minimum employment and training requirements of this chapter if such officer is appointed or employed as a peace officer by the state or a subdivision or municipality thereof.

(10) "School" means any school, college, university, academy, or training program approved by the council which offers basic law enforcement training and which consists of a combination of a course curriculum, instructors, and facilities.

(11) "Speed detection device" means that particular device designed to measure the speed or velocity of a motor vehicle and marketed under the name "Vascar," any device designed to measure the speed or velocity of motor vehicles using the Doppler principle of radio detection and ranging and commonly marketed under the name "radar," or any similar device, including but not limited to laser, operating under the same or similar principle, which device is approved by the Department of Public Safety for the measurement of speed, including any device for the measurement of speed or velocity based upon the Doppler principle of radar or speed timing principle of laser. (Ga. L. 1970, p. 208, §§ 2, 14; Ga. L. 1975, p. 1165, §§ 2, 3, 10; Ga. L. 1976, p. 395, §§ 1-5; Ga. L. 1978, p. 992, §§ 1, 2; Ga. L. 1978, p. 2299, § 1; Ga. L. 1980, p. 979, § 1; Ga. L. 1981, p. 778, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 2478, §§ 1, 2, 5, 6; Ga. L. 1985, p. 283, § 1; Ga. L. 1987, p. 1141, § 1; Ga. L. 1989, p. 568, § 1; Ga. L. 1993, p. 91, § 35; Ga. L. 1993, p. 966, §§ 1, 2; Ga. L. 1995, p. 880, § 1; Ga. L. 1995, p. 1238, § 1; Ga. L. 1996, p. 1281, § 1; Ga. L. 1997, p. 582, §§ 1, 2; Ga. L. 1997, p. 1453, § 1; Ga. L. 1997, p. 1488, §§ 2A, 2B, 7A, 7B; Ga. L. 1998, p. 128, § 35; Ga. L. 1998, p. 224, § 2; Ga. L. 1999, p. 777, §§ 2, 3; Ga. L. 2012, p. 775, § 35/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (4).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "Department of Juvenile Justice" was substituted for "Department of Children and Youth Services" in subparagraph (8)(B).

Administrative rules and regulations. — Training, Official Compilation of the Rules and Regulations of the Sate of Georgia, Personnel, Board of Corrections, Sec. 124-2-1-.06.

Definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Peace Officer Standards and Training Council, Sec. 464-2-.01.

Law reviews. — For review of 1996 use of radar speed detection devices legislation, see 13 Ga. St. U. L. Rev. 244 (1996).

JUDICIAL DECISIONS

Power to direct owner from burning building. — Under the police power, a deputy sheriff is authorized to go upon private property and direct the owner to move back from a burning building, when the deputy has been made aware of the possibility of an explosion, and in the deputy's opinion the safety of a 2½-year-old child was unnecessarily endangered because of the proximity to the burning structure. Veit v. State, 182 Ga. App. 753, 357 S.E.2d 113 (1987).

Construction with other law. — Juvenile's interference with a juvenile probation officer's attempt to take the juvenile into custody, after the juvenile tested positive for illegal drug use, was sufficient to support an adjudication under O.C.G.A. § 16-10-24(b); moreover, the appeals court was not persuaded by the juvenile's

contention that O.C.G.A. § 42-8-30 specifically limited the role of the "probation supervisor" over juveniles to those counties in which no juvenile probation system existed. In the Interest of M.M., 287 Ga. App. 233, 651 S.E.2d 155 (2007), cert. denied, 2008 Ga. LEXIS 95 (Ga. 2008).

Cited in Talley v. State, 129 Ga. App. 479, 199 S.E.2d 908 (1973); Smith v. Price, 616 F.2d 1371 (5th Cir. 1980); State v. Lockett, 259 Ga. App. 179, 576 S.E.2d 582 (2003); Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003); Love v. State, 290 Ga. App. 486, 659 S.E.2d 835 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Power to arrest is essential to status of peace officer. — Employee of agency who is required by oath of office to preserve public order and protect life and property, but does not have power to make arrests, is not a peace officer under this definition. 1981 Op. Att'y Gen. No. 81-31.

Power to arrest confers duty to preserve public order. — There are two conditions provided for in the definition of a peace officer, but it must be understood that once a person is given the power to arrest it necessarily follows that the person has a duty to preserve the public order. 1981 Op. Att'y Gen. No. 81-31.

District attorney not law enforcement officer or peace officer. — District attorney does not fit under any definition of a law enforcement officer or peace officer in this state. 1980 Op. Att'y Gen. No. U80-33.

Park security officers not "peace officers". — Though the security officers of the North Georgia Mountains Authority do have the power of arrest, the security officers fail to meet the definition of "peace officer" on two other grounds: (1) the security officers are not responsible for the enforcement of the criminal laws of the state or its political subdivisions; and (2) the security guards are not employed by the Department of Public Safety, a municipality, or a county. 1972 Op. Att'y Gen. No. 72-27.

Sheriffs and deputy sheriffs of municipal courts are not "peace officers" as defined by this section since they are not employed by a law enforcement unit. 1975 Op. Att'y Gen. No. U75-7 (see O.C.G.A. § 35-8-2).

Independent communications department not "law enforcement unit". — Communications department, independent from the law enforcement agencies the department serves, which is primarily an information transmitting department, is not a "law enforcement unit" as defined in paragraph (7) of O.C.G.A. § 35-8-2. 1983 Op. Att'y Gen. No. 83-67.

Intent of General Assembly regarding certification of persons employed to use speed detection devices was to have people certified no matter which type of device is used as long as the device itself fits within the definition provided for under paragraph (11) of this section. 1981 Op. Att'y Gen. No. 81-77 (see O.C.G.A. § 35-8-2).

Paragraph (11) does not include devices not considered under § 40-14-1. — Paragraph (11) of Ga. L. 1970, p. 208, §§ 2 and 14 (see O.C.G.A. § 35-8-2) specifically defines certain devices and does not bring in any additional types of devices not considered under the definition found in Ga. L. 1970, p. 435, § 3 (see O.C.G.A. § 40-14-1). 1981 Op. Att'y Gen. No. 81-77.

Definition of "speed detection device" in Ga. L. 1970, p. 208, §§ 2 and 14 (see O.C.G.A. § 35-8-2) does not conflict with the definition for the same device in Ga. L. 1970, p. 435, § 3 (see O.C.G.A. § 40-14-1). 1981 Op. Att'y Gen. No. 81-77.

Stopwatch as "speed detection device". — Although not normally thought to be a "speed detection device," a stopwatch meets this definition when the stopwatch is being used in traffic enforcement. 1981 Op. Att'y Gen. No. 81-77.

Stopwatch is a mechanism similar to "Vascar." In actuality "Vascar" is a type of stopwatch combined with a computer which handles the mathematical functions. 1981 Op. Att'y Gen. No. 81-77.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 980, 981.
C.J.S. — 22A C.J.S., Criminal Law, § 902. 62 C.J.S., Municipal Corporations, § 573 et seq.

35-8-3. Establishment of Georgia Peace Officer Standards and Training Council; membership; organization; administrative assignment to Department of Public Safety.

(a) The Georgia Peace Officer Standards and Training Council is established. The council shall consist of 19 voting members and five advisory members.

(b) The voting members shall consist of:

(1) An appointee of the Governor who is not the Attorney General, the commissioner of public safety or his or her designee, the director of investigation of the Georgia Bureau of Investigation or his or her designee, the president of the Georgia Association of Chiefs of Police or his or her designee, the president of the Georgia Sheriffs Association or his or her designee, the president of the Georgia Municipal Association or his or her designee, the president of the Association County Commissioners of Georgia or his or her designee, the president of the Peace Officers' Association of Georgia or his or her designee, the commissioner of corrections or his or her designee, the chairperson of the State Board of Pardons and Paroles or his or her designee, and the president of the Georgia Prison Wardens Association or his or her designee, who shall be ex officio members of the council;

(2) Six members who shall be appointed by the Governor for terms of four years, their initial appointments, however, being two for four-year terms, two for three-year terms, and two for two-year terms. Appointments shall be made so that there are always on the council the following persons who are appointed by the Governor: one chief of police; two municipal police officers other than a chief of police; one county sheriff; one city manager or mayor; and one county commissioner. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment. Vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term. Any member may be appointed for additional terms; and

(3) Two members who are peace officers and who shall be appointed by the Governor for terms of four years. Neither person shall serve beyond the time he or she is actively employed or serves as a peace officer. Vacancies shall be filled in the same manner as the

original appointment and successors shall serve for the unexpired term.

(c) Five advisory members shall be appointed by the council to serve on the council in an advisory capacity only without voting privileges.

(d) Membership on the council does not constitute public office and no member shall be disqualified from holding public office by reason of his or her membership.

(e) The council is assigned to the Department of Public Safety for administrative purposes only, as prescribed in Code Section 50-4-3. (Ga. L. 1970, p. 208, § 3; Ga. L. 1972, p. 866, § 1; Ga. L. 1972, p. 1015, § 1606; Ga. L. 1975, p. 1165, § 1; Ga. L. 1976, p. 395, § 6; Ga. L. 1976, p. 1684, §§ 1, 2; Ga. L. 1977, p. 717, §§ 2-4; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 2478, §§ 3, 7, 8; Ga. L. 1983, p. 3, § 26; Ga. L. 1985, p. 283, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1997, p. 1488, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a second "the" preceding "time he" was deleted in the second sentence of paragraph (b)(3).

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 45.

JUDICIAL DECISIONS

Judicial immunity. — Based on the statutory scheme as to Georgia Peace Officer Standards and Training Council's power to certify or discipline a police chief and its investigative powers under O.C.G.A. §§ 35-8-7.1 and 35-8-7.2, and the chief's remedies under Georgia's Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., the Council's members and investigators had absolute immunity via quasi-judicial immunity, and thus, the chief's civil rights action against the Council members and investigators, alleging through 42 U.S.C. §§ 1983 and 1985(3), violations of the chief's First and Fourteenth Amendment substantive due process rights, was dismissed. Evans v. Ga. Peace Officer Stds. & Training Council, No. 1:05-CV-2579-RLV, 2006 U.S. Dist. LEXIS 19415 (N.D. Ga. Mar. 29, 2006).

35-8-4. Officers of council; quorum; minutes of meetings and records; reports to Governor and General Assembly.

The business of the council shall be conducted in the following manner:

(1) The officers of the council, who shall consist of a chairman, vice-chairman, and secretary-treasurer, shall be elected at the first meeting of each calendar year.

(2) Seven members of the council shall constitute a quorum for the transaction of business.

(3) The council shall maintain minutes of its meetings and such other records as it deems necessary.

(4) The council shall report at least annually to the Governor and to the General Assembly as to its activities. (Ga. L. 1970, p. 208, § 4.)

35-8-5. Compensation of members of council.

The members of the council shall receive no salary but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their duties. (Ga. L. 1970, p. 208, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 279 et seq.

35-8-6. Appointment of executive director of council; contracts for services; personnel; investigators; subpoenas; funding; gifts, grants, or donations.

(a) The council may appoint an executive director who shall serve at the pleasure of the council. The council shall establish the compensation for the executive director.

(b) The executive director may contract for such services as may be necessary and authorized in order to carry out the provisions of this chapter and may employ such other professional, technical, and clerical personnel deemed necessary to carry out the purposes of this chapter.

(c) The executive director is authorized to appoint certain investigators for the purpose of carrying out the provisions of this chapter. The executive director and persons so appointed shall meet all employment and training requirements of this chapter as for all other peace officers and shall have all of the powers of other peace officers. Any investigator of the council shall have access to and may examine any writing, document, or other material which is deemed by the chairman of the council to be related to the fitness of any peace officer or applicant to practice as a peace officer. The chairman or executive director of the council may issue subpoenas to compel such access. When a subpoena is disobeyed, the council may apply to the superior court of the county where the person to whom the subpoena is issued resides for an order requiring obedience. Failure to comply with such order shall be punishable as for contempt of court.

(d) The funds necessary to carry out this chapter shall come from the funds appropriated to and available to the council and from any other available funds.

(e) The council is authorized to accept and use gifts, grants, donations, property, both real and personal, and services for the purpose of carrying out this chapter.

(f) Any funds, property, or services received as gifts, grants, or donations shall be kept separate and apart from any funds appropriated to the council; and the funds, property, or services so received by gifts, grants, or donations shall be the property and funds of the council and, as such, shall not lapse at the end of each fiscal year but shall remain under the control of and subject to the direction of the council for carrying out this chapter. (Ga. L. 1970, p. 208, § 7; Ga. L. 1975, p. 1165, § 5; Ga. L. 1988, p. 483, § 1; Ga. L. 1989, p. 514, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Council personnel selected and appointed with concurrence of Department of Public Safety. — Staff, clerical, and technical assistants, and other personnel of the council are to be selected and appointed with the concurrence of the Department of Public Safety and the council, and are to serve only so long as their appointment is mutually agreeable. 1975 Op. Att'y Gen. No. 75-89.

Appointment of investigators. — Subsection (c) of O.C.G.A. § 35-8-6, which authorizes the Executive Director of the Georgia Peace Officer Standards and Training Council to appoint investigators with the power of arrest, allows for the appointment of officers exempted from the certification requirements by the grandfathering provisions in O.C.G.A. § 35-8-10(c) whose registrations have remained in effect, and who are in compliance with their training requirements. 1989 Op. Att'y Gen. No. U89-9.

Responsibility for the proper administration of any fund received lies with the council; as an activity of the Department of Public Safety, though, the council is subject to budgetary adjustments just as any other activity within the department. 1975 Op. Att'y Gen. No. 75-89.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 68.

35-8-7. Powers and duties of council generally.

The council is vested with the following powers and duties:

(1) To meet at such times and places as it may deem necessary;

(2) To contract with other agencies, public or private, or persons as it deems necessary for the rendering and affording of such services, facilities, studies, and reports to the council as will best assist it to carry out its duties and responsibilities;

(3) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this chapter;

(4) To establish criteria to be used in certifying schools authorized to conduct training required by this chapter;

(5) To certify schools as authorized to conduct training required by this chapter;

(6) To prescribe minimum qualifications for directors of schools certified to conduct training required by this chapter;

(7) To certify such school directors;

(8) To establish minimum qualifications for instructors at schools certified to conduct training required by this chapter;

(9) To certify instructors authorized to conduct training required by this chapter;

(10) To reevaluate certified schools annually to determine if such schools shall continue to be certified;

(11) To withdraw or suspend certification of schools, school directors, and instructors who fail to continue to meet or maintain, at any given time, the criteria and qualifications required for school, school director, or instructor certification;

(12) To determine whether a candidate has met the requirements of this chapter and is qualified to be employed as a peace officer and to issue a certificate to those so qualified;

(13) To certify to designated law enforcement units a candidate's successful completion of the course;

(14) To refuse to grant a certificate to or to discipline a certified peace officer or an exempt peace officer under this chapter or any antecedent law;

(15) To establish and modify the curriculum, including the methods of instruction, composing the basic training courses and to set the minimum number of hours therefor;

(16) To establish and recommend curricula for such advanced, in-service, and specialized training courses as the council shall deem advisable and to recognize the completion of such courses by the issuance of certificates;

(17) To provide technical assistance as requested by law enforcement units;

(18) To provide for and administer the registration of all exempt peace officers;

(19) To research, plan, and establish policy relative to peace officer training and to develop and coordinate the delivery of peace officer

training programs through such agencies and institutions as the council may deem appropriate;

(20) To establish as part of the curriculum for basic and in-service training courses for all peace officers training on organized criminal activity and criminal street gangs;

(21) To develop, adopt, and issue advanced or professional peace officer certificates based upon the attainment of specified education, advanced or specialized training, and experience as the council may determine;

(22) To provide and administer the certification of persons qualified to operate radar speed detection devices and to withdraw or suspend such certificates as provided for in this chapter;

(23) To impose administrative fees, as determined by the council, for services provided pursuant to the provisions of this chapter;

(24) To adopt in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," such rules and regulations as are necessary to carry out the purposes of this chapter; and

(25) To do any and all things necessary or convenient to enable it to perform wholly and adequately its duties and to exercise the power granted to it. (Ga. L. 1970, p. 208, § 6; Ga. L. 1975, p. 1165, § 4; Ga. L. 1976, p. 395, § 7; Ga. L. 1977, p. 713, §§ 1, 2; Ga. L. 1977, p. 717, § 1; Ga. L. 1978, p. 1680, § 1; Ga. L. 1980, p. 979, § 2; Ga. L. 1985, p. 539, § 1; Ga. L. 1987, p. 3, § 35; Ga. L. 1997, p. 1488, § 4; Ga. L. 1998, p. 270, § 12; Ga. L. 2010, p. 212, § 1/SB 324.)

The 2010 amendment, effective May 20, 2010, added paragraph (23) and redesignated former paragraphs (23) and (24) as present paragraphs (24) and (25), respectively. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 212, § 2/SB 324, not codified by the General Assembly, provides that: "Nothing contained in this Act shall be construed so as to suggest that any administrative fees that may have been collected by the Georgia Peace Officer Standards and Training Council prior to this Act's enactment were collected without authority. Nor shall this Act be construed so as to create in any person paying administrative fees prior to the effective date of this Act a cause of action for the payment of such fees." This Act became effective May 20, 2010.

Administrative rules and regulations. — Administration of Georgia Peace Officer and Training Standards Council, Official Compilation of the Rules and Regulations of the State of Georgia, § 464-1-.01.

Law reviews. — For review of 1998 legislation relating to crimes and offenses, see 15 Ga. St. U. L. Rev. 80 (1998).

JUDICIAL DECISIONS

Certification requirement. — Since the arresting officer met all the requirements of Ga. L. 1982, p. 3, § 35 (see O.C.G.A. § 35-8-8) and had successfully completed the course required by Ga. L. 1975, p. 1165, § 6 (see O.C.G.A. § 35-8-9),

the officer was not disqualified to make arrests on the ground that the officer had not yet been certified under Ga. L. 1980, p. 979, § 2 (see O.C.G.A. § 35-8-7). Davis v. State, 164 Ga. App. 312, 295 S.E.2d 131 (1982).

Cited in City of Pembroke v. Hagin, 194 Ga. App. 642, 391 S.E.2d 465 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Council authorized to take prior training into account when deciding on individual's certification. — Since the council is authorized to determine who, in the council's judgment and discretion, has fulfilled the training requirements of this chapter and ought to be certified, the council is fully consonant with the council's responsibility and authority to take prior law enforcement training into account when deciding whether or not to certify an individual as a peace officer, regardless of the individual's status at the time the individual received such training. 1975 Op. Att'y Gen. No. 75-118 (see O.C.G.A. Ch. 8, T. 35).

Responsibility for the proper administration of any funds received lies with the council; as an activity of the Department of Public Safety, though, the council is subject to budgetary adjustments just as any other activity within the department. 1975 Op. Att'y Gen. No. 75-89.

Reimbursement of school security personnel. — Georgia Peace Officer Standards and Training Council is required to reimburse school security personnel employed by the board of education of a county or an independent board of education of a municipality for the various public schools for certain costs incurred in training. 1989 Op. Att'y Gen. 89-29.

Council exceeds powers if council reimburses private personnel. — While it would be fully consistent with the council's statutorily delegated authority to assume the responsibility for reimbursing state and local government units over whose law enforcement personnel the council has mandatory training and certification authority, the council would be exceeding the council's statutory powers if the council were to administrate reimbursement procedures or authorize reimbursement for civilians or other private personnel whom the council is not mandated to train or certify. 1975 Op. Att'y Gen. No. 75-118.

Federal law on gun ban for individuals convicted of domestic violence. — For discussion of how amendments to the Gun Control Act of 1968, 18 U.S.C. § 921 et seq., banning possession of guns by individuals convicted of a misdemeanor crime of domestic violence, affect the council's responsibilities in certification matters, see 1996 Op. Att'y Gen. No. 96-25.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 50 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 224, 225, 234. 73 C.J.S., Public Administrative Law and Procedures, § 68 et seq.

35-8-7.1. Authority of council to refuse certificate to applicant or to discipline certified peace officer or exempt peace officer; grounds; restoration of certificate; emergency suspension of certification; notice of investigation.

(a) The council shall have authority to refuse to grant a certificate to an applicant or to discipline a certified peace officer or exempt peace officer under this chapter or any antecedent law upon a determination

by the council that the applicant or certified peace officer or exempt peace officer has:

(1) Failed to demonstrate the qualifications or standards for a certificate provided in this chapter or in the rules and regulations of the council. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the council that he meets all requirements for the issuance of a certificate;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of being a peace officer or in any document connected therewith or practiced fraud or deceit or intentionally made any false statement in obtaining a certificate to practice as a peace officer;

(3) Been convicted of a felony in the courts of this state or any other state, territory, country, or of the United States. As used in this paragraph, the term "conviction of a felony" shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or a verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon. However, the council may not deny a certificate to an applicant with a conviction if the adjudication of guilt or sentence is withheld or not entered thereon;

(4) Committed a crime involving moral turpitude, without regard to conviction. The conviction of a crime involving moral turpitude shall be conclusive of the commission of such crime. As used in this paragraph, the term "conviction" shall have the meaning prescribed in paragraph (3) of this subsection;

(5) Had his certificate or license to practice as a peace officer revoked, suspended, or annulled by any lawful certifying or licensing authority; or had other disciplinary action taken against him by any lawful certifying or licensing authority; or was denied a certificate or license by any lawful certifying or licensing authority;

(6) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of a peace officer;

(7) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the council, the United States, or any other

lawful authority without regard to whether the violation is criminally punishable, which law, rule, or regulation relates to or in part regulates the practice of a peace officer;

(8) Committed any act or omission which is indicative of bad moral character or untrustworthiness;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction, within or outside this state;

(10) Become unable to perform as a peace officer with reasonable skill and safety to citizens by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition; or

(11) Been suspended or discharged by the peace officer's employing law enforcement unit for disciplinary reasons.

(b)(1) When the council finds that any person is unqualified to be granted a certificate or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the council may take any one or more of the following actions:

(A) Refuse to grant a certificate to an applicant;

(B) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the peace officer;

(C) Suspend any certificate for a definite period;

(D) Limit or restrict any certificate;

(E) Revoke any certificate; or

(F) Condition the penalty, or withhold formal disposition, upon the peace officer's completing such care, counseling, or treatment, as directed by the council.

(2) In addition to and in conjunction with the foregoing actions, the council may make a finding adverse to the applicant or peace officer but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the peace officer on probation, which probation may be vacated upon noncompliance with such reasonable terms as the council may impose.

(c) In its discretion, the council may restore and reissue a certificate issued under this chapter or any antecedent law to a peace officer and, as a condition thereof, may impose any disciplinary or corrective measure provided in this chapter.

(d) Upon arrest or indictment of a peace officer for any crime which is punishable as a felony, the executive director of the council shall

order the emergency suspension of such officer's certification upon the executive director's determination that the suspension is in the best interest of the health, safety, or welfare of the public. The order of emergency suspension shall be made in writing and shall specify the basis for the executive director's determination. Following the issuance of an emergency suspension order, proceedings of the council in the exercise of its authority to discipline any peace officer shall be promptly scheduled as provided for in Code Section 35-8-7.2. The emergency suspension order of the executive director shall continue in effect until issuance of the final decision of the council or such order is withdrawn by the executive director.

(e) Upon initiating an investigation of a peace officer for possible disciplinary action or upon disciplining a peace officer pursuant to this Code section, the council shall notify the head of the law enforcement agency that employs such peace officer of the investigation or disciplinary action. In the case of an investigation, it shall be sufficient to identify the peace officer and state that a disciplinary investigation has been opened. Notice of the initiation of an investigation shall be sent by priority mail. If the investigation is completed without any further action, notice of the termination of such investigation shall also be provided to the head of the employing agency. In the case of disciplinary action, the notice shall identify the officer and state the nature of the disciplinary action taken. The notice of disposition shall be sent only after the action of the council is deemed final. Such notice shall be sent by priority mail.

(f) If the certification of a peace officer is suspended or revoked by either the executive director or council, then the council shall notify the head of the law enforcement agency that employs the peace officer; the district attorney of the judicial circuit in which such law enforcement agency is located; and the solicitor of the state court, if any, of the county in which such law enforcement agency is located. It shall be sufficient for this notice to identify the officer and state the length of time, if known, that the officer will not have powers of arrest. Such notice shall be sent by priority mail. (Code 1981, § 35-8-7.1, enacted by Ga. L. 1985, p. 539, § 2; Ga. L. 1987, p. 3, § 35; Ga. L. 1993, p. 91, § 35; Ga. L. 2008, p. 237, § 1/SB 373; Ga. L. 2011, p. 506, § 1/HB 203.)

The 2011 amendment, effective July 1, 2011, added subsections (e) and (f).

Law reviews. — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Agreement in violation of section void. — Purported agreement between a police officer and county human resources director that the officer would withdraw an appeal of the officer's termination if disciplinary materials were removed from

the employee file to preserve the officer's Peace Officer Standards and Training Council (P.O.S.T.) certification was void and unenforceable because it would have violated not only the P.O.S.T. Council's regulations but also the record-keeping requirements of O.C.G.A. § 35-8-15 and the prohibition of O.C.G.A. § 35-8-7.1(a)(2). Maner v. Chatham County, 246 Ga. App. 265, 540 S.E.2d 248 (2000).

Judicial immunity. — Based on the statutory scheme as to Georgia Peace Officer Standards and Training Council's power to certify or discipline a police chief and the council's investigative powers under O.C.G.A. §§ 35-8-7.1 and 35-8-7.2, and the chief's remedies under Georgia's Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., the Council's members and investigators had absolute immunity via quasi-judicial immunity, and thus, the chief's civil rights action against the Council members and investigators, alleging through 42 U.S.C. §§ 1983 and 1985(3), violations of the chief's First and Fourteenth Amendment substantive due process rights, was dismissed. Evans v. Ga. Peace Officer Stds. & Training Council, No. 1:05-CV-2579-RLV, 2006 U.S. Dist. LEXIS 19415 (N.D. Ga. Mar. 29, 2006).

Peace officer's right against self-incrimination did not extend to administrative inquiry into job performance. — Because a peace officer's invocation of a right against self-incrimination could not shield that officer from an inquiry into the effect of that assertion on the officer's job performance, and because the record supported an administrative decision that the officer's refusal to cooperate in an investigation provided sufficient grounds for the Georgia Peace Officer Standards and Training Council to enter an order of decertification, the superior court erred in reversing an administrative law judge's decision upholding the decertification and finding that the officer's actions amounted to unprofessional conduct. Ga. Peace Officers Stds. & Training Council v. Anderson, 290 Ga. App. 91, 658 S.E.2d 840 (2008).

RESEARCH REFERENCES

ALR. — Nonsexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying police officer's demotion or removal or suspension from duty, 19 ALR6th 217.

35-8-7.2. Administrative procedure; hearings; review.

(a) Except as otherwise provided in subsection (b) of this Code section, proceedings of the council in the exercise of its authority to issue any certificate or discipline any peace officer under the terms of this chapter shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In all such proceedings the council shall have authority to compel the attendance of witnesses and the production of any book, writing, or document upon the issuance of a subpoena therefor. In any hearing in which the fitness of a peace officer or applicant is in question, the council may exclude all persons from its deliberation of the appropriate action and may, when it deems necessary, speak to the peace officer or applicant in private. All final determinations, findings, and conclusions of the council under this chapter are final and conclusive decisions of the matters involved.

(b) Proceedings for review of a final decision of the council shall be instituted by filing a petition within 30 days after the service of the final decision of the council or, if a rehearing is requested, within 30 days

after the decision thereon. The petition shall be filed in the superior court of the county of residence of the petitioner. (Code 1981, § 35-8-7.2, enacted by Ga. L. 1985, p. 539, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "superior court" was substituted for "Superior Court" in subsection (b).

JUDICIAL DECISIONS

Judicial immunity. — Based on the statutory scheme as to Georgia Peace Officer Standards and Training Council's power to certify or discipline a police chief and the council's investigative powers under O.C.G.A. §§ 35-8-7.1 and 35-8-7.2, and the chief's remedies under Georgia's Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., the Council's members and investigators had absolute immunity via quasi-judicial immunity, and thus, the chief's civil rights action against the Council members and investigators, alleging through 42 U.S.C. §§ 1983 and 1985(3), violations of the chief's First and Fourteenth Amendment substantive due process rights, was dismissed. Evans v. Ga. Peace Officer Stds. & Training Council, No. 1:05-CV-2579-RLV, 2006 U.S. Dist. LEXIS 19415 (N.D. Ga. Mar. 29, 2006).

Cited in Ga. Peace Officers Stds. & Training Council v. Anderson, 290 Ga. App. 91, 658 S.E.2d 840 (2008).

35-8-8. Requirements for appointment or certification of persons as peace officers and pre-employment attendance at basic training course; "employment related information" defined.

(a) Any person employed or certified as a peace officer shall:

(1) Be at least 18 years of age;

(2) Be a citizen of the United States;

(3) Have a high school diploma or its recognized equivalent;

(4) Not have been convicted by any state or by the federal government of any crime the punishment for which could have been imprisonment in the federal or state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for the purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered;

(5) Be fingerprinted for the purpose of conducting a fingerprint based search at the Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the existence of any criminal record;

(6) Possess good moral character as determined by investigation under procedure established by the council and fully cooperate during the course of such investigation;

(7) Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which might adversely affect his or her exercise of the powers or duties of a peace officer; and

(8) Successfully complete a job related academy entrance examination provided for and administered by the council in conformity with state and federal law. Such examination shall be administered prior to entrance to the basic course provided for in Code Sections 35-8-9 and 35-8-11. The council may change or modify such examination and shall establish the criteria for determining satisfactory performance on such examination. Peace officers who do not perform satisfactorily on the examination shall be ineligible to retake such examination for a period of six months after an unsuccessful attempt. The provisions of this paragraph establish only the minimum requirements of academy entrance examinations for peace officer candidates in this state; each law enforcement unit is encouraged to provide such additional requirements and any preemployment examination as it deems necessary and appropriate.

(b) Any person authorized to attend the basic training course prior to employment as a peace officer shall meet the requirements of subsection (a) of this Code section.

(c)(1) For purposes of this subsection, the term "employment related information" means written information contained in a prior employer's records or personnel files that relates to an applicant's, candidate's, or peace officer's performance or behavior while employed by such prior employer, including performance evaluations, records of disciplinary actions, and eligibility for rehire. Such term shall not include information prohibited from disclosure by federal law or any document not in the possession of the employer at the time a request for such information is received.

(2) Where an investigation is conducted for the purpose of hiring, certifying, or continuing the certification of a peace officer, an employer shall disclose employment related information to the investigating law enforcement agency upon receiving a written request from such agency. Disclosure shall only be required under this subsection if the law enforcement agency's request is accompanied by a copy of a signed, notarized statement from the applicant, candidate, or peace officer releasing and holding harmless such employer from any and all liability for disclosing complete and accurate information to the law enforcement agency.

(3) An employer may charge a reasonable fee to cover actual costs incurred in copying and furnishing documents to a requesting law enforcement agency, including retrieving and redacting costs, pro-

vided such amount shall not exceed $25.00 or $0.25 per page, whichever is greater. No employer shall be required to prepare or create any document not already in the employer's possession at the time a request for employment related information is received. Any employment related information provided pursuant to this subsection that is not subject to public disclosure while in the possession of a prior employer shall continue to be privileged and protected from public disclosure as a record of the requesting law enforcement agency.

(4) No employer or law enforcement agency shall be subject to any civil liability for any cause of action by virtue of disclosing complete and accurate information to a law enforcement agency in good faith and without malice pursuant to this subsection. In any such cause of action, malice or bad faith shall only be demonstrated by clear and convincing evidence. Nothing contained in this subsection shall be construed so as to affect or limit rights or remedies provided by federal law.

(5) Before taking final action on an application for employment based, in whole or in part, on any unfavorable employment related information received from a previous employer, a law enforcement agency shall inform the applicant, candidate, or peace officer that it has received such employment related information and that the applicant, candidate, or peace officer may inspect and respond in writing to such information. Upon the applicant's, candidate's, or peace officer's request, the law enforcement agency shall allow him or her to inspect the employment related information and to submit a written response to such information. The request for inspection shall be made within five business days from the date that the applicant, candidate, or peace officer is notified of the law enforcement agency's receipt of such employment related information. The inspection shall occur not later than ten business days after said notification. Any response to the employment related information shall be made by the applicant, candidate, or peace officer not later than three business days after his or her inspection.

(6) Nothing contained in this Code section shall be construed so as to require any person to provide self-incriminating information or otherwise to compel any person to act in violation of his or her right guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section I, Paragraph XVI of the Georgia Constitution. It shall not be a violation of this Code section for a person to fail to provide requested information based on a claim that such information is self-incriminating provided that notice of such claim is served in lieu of the requested information. An action against such person to require disclosure on the grounds that the claim of

self-incrimination is not substantiated may be brought in the superior court of the county of such party's residence or where such information is located. (Ga. L. 1970, p. 208, § 8; Ga. L. 1973, p. 539, § 1; Ga. L. 1976, p. 1563, § 1; Ga. L. 1976, p. 1684, §§ 3, 4; Ga. L. 1977, p. 712, § 1; Ga. L. 1977, p. 1180, §§ 1, 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35; Ga. L. 2004, p. 986, § 2; Ga. L. 2008, p. 237, § 2/SB 373; Ga. L. 2011, p. 545, § 1/SB 95.)

The 2011 amendment, effective May 12, 2011, inserted "the" near the middle of paragraph (a)(4); added "and fully cooperate during the course of such investigation" at the end of paragraph (a)(6); substituted "exercise of" for "exercising" in paragraph (a)(7); inserted "of subsection (a)" in subsection (b); and added subsection (c).

Cross references. — Qualifications of firefighters, § 25-4-8.

JUDICIAL DECISIONS

Prohibition against felons running for office of sheriff. — Georgia Const. 1976, Art. IX, Sec. I, Para. IX (see Ga. Const. 1983, Art. IX, Sec. I, Para. III) authorizes the General Assembly to prohibit a convicted felon from running for office of sheriff even if the felon obtains full pardon. Georgia Peace Officer Stds. & Training Council v. Mullis, 248 Ga. 67, 281 S.E.2d 569 (1981).

Constitutional prohibition against convicted felon's holding appointment of honor or trust, such as position of deputy sheriff, unless pardoned, in no way prevents General Assembly from imposing as a qualification for peace officer that the individual not have been convicted of a felony. Georgia Peace Officer Stds. & Training Council v. Mullis, 248 Ga. 67, 281 S.E.2d 569 (1981).

Cited in Campbell v. State, 136 Ga. App. 338, 221 S.E.2d 212 (1975); Davis v. State, 143 Ga. App. 329, 238 S.E.2d 289 (1977); Mason v. State, 147 Ga. App. 179, 248 S.E.2d 302 (1978); Lemley v. State, 245 Ga. 350, 264 S.E.2d 881 (1980); Carnes v. Crawford, 246 Ga. 677, 272 S.E.2d 690 (1980); Knowles v. State, 159 Ga. App. 239, 283 S.E.2d 51 (1981); Jefferson v. State, 159 Ga. App. 740, 285 S.E.2d 213 (1981); Davis v. State, 165 Ga. App. 231, 295 S.E.2d 131 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Sheriff as registered peace officer must meet requirements under § 15-16-1. — Sheriff who was a registered peace officer under Ga. L. 1977, p. 1180, §§ 1 and 2 (see O.C.G.A. § 35-8-8) but did not complete two years of service as sheriff prior to January 1, 1980, must meet the requirements of former Code 1933, § 24-2801 (see O.C.G.A. § 15-16-1). 1980 Op. Att'y Gen. No. 80-148.

Agencies may hire those 18 years old. — This section allows, but does not necessarily require, law enforcement agencies to hire those as young as 18 years of age. 1973 Op. Att'y Gen. No. 73-130 (see O.C.G.A. § 35-8-8).

Appointment of investigators. — O.C.G.A. § 35-8-6(c), which authorizes the Executive Director of the Georgia Peace Officer Standards and Training Council to appoint investigators with the power of arrest, allows for the appointment of officers exempted from the certification requirements by the grandfathering provisions in O.C.G.A. § 35-8-10(c) whose registrations have remained in effect, and who are in compliance with the officers' training requirements. 1989 Op. Att'y Gen. No. U89-9.

Individual cannot be employed as police officer prior to obtaining high school diploma or equivalent; an individual may not be employed as a peace officer with the understanding that the

individual must obtain the high school diploma or the diploma's equivalent prior to being certified. 1970 Op. Att'y Gen. No. 70-152.

Single felony conviction disqualifies individual from employment or certification. — In order for an individual to be disqualified from employment or certification under this chapter, the individual's single conviction would have to have been for a felony and not a misdemeanor. 1971 Op. Att'y Gen. No. 71-191 (see O.C.G.A. Ch. 8, T. 35).

Imprisonment in "prison" or "penitentiary" same. — Since paragraph (a)(4) uses the word "prison" and not the word "penitentiary," it should be noted the two are interchangeable and the variation, therefore, is legally insignificant. 1971 Op. Att'y Gen. No. 71-191 (see O.C.G.A. § 35-8-8).

Possible that convicted individual does not serve time. — Word "could" in paragraph (a)(4) refers to the possibility that an individual convicted of a felony might not, and often does not, serve time on the sentence, i.e., the sentence might be probated or suspended. 1971 Op. Att'y Gen. No. 71-191 (see O.C.G.A. § 35-8-8).

Educational and medical prerequisites apply to all law enforcement officers certified by the council; the council may not certify officers who do not meet the certification requirements specified in this chapter. 1970 Op. Att'y Gen. No. 70-209 (see O.C.G.A. Ch. 8, T. 35).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 76. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 624 et seq. 67 C.J.S., Officers and Public Employees, §§ 22, 26 et seq.

35-8-9. Completion of basic training course required; acceptance of other instruction; effect of failure to complete basic training requirements; limitation.

(a) In addition to complying with the preemployment standards as set forth in Code Section 35-8-8, each and every candidate shall satisfactorily complete a basic training course prior to his or her appointment as a peace officer.

(b) The council shall have the authority to recognize instruction received by a candidate if, in the determination of the council, such instruction is at least equivalent to that required by this chapter. If such instruction is recognized, then it shall be in lieu of part or parts of the minimum hours of instruction required for certification by this chapter.

(c) Should any candidate fail to complete successfully the basic training requirements specified in this Code section, he or she shall not perform any of the duties of a peace officer involving the power of arrest until such training shall have been successfully completed.

(d) A municipal correctional institution covered under the provisions of subparagraph (C) of paragraph (7) and subparagraph (C) of paragraph (8) of Code Section 35-8-2 shall not be permitted to have more than ten correctional officers in any 12 month period take the basic training course necessary to become a certified peace officer. (Ga. L.

1970, p. 208, § 9; Ga. L. 1975, p. 1165, § 6; Ga. L. 1992, p. 1004, § 1; Ga. L. 1994, p. 1355, § 1; Ga. L. 1997, p. 1488, § 4A.)

JUDICIAL DECISIONS

Reimbursement by police officer for training. — It is not against public policy for a police officer to agree to reimburse an employer, a city, for a portion of the cost of training the officer if the officer voluntarily terminates employment with the city within 12 months of graduation from the training program. City of Pembroke v. Hagin, 194 Ga. App. 642, 391 S.E.2d 465 (1990).

Cited in Douglas v. State, 145 Ga. App. 42, 243 S.E.2d 298 (1978); Davis v. State, 164 Ga. App. 312, 295 S.E.2d 131 (1982); Harvey v. State, 165 Ga. App. 7, 299 S.E.2d 61 (1983); Dechant v. State, 294 Ga. App. 23, 668 S.E.2d 501 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Educational and medical prerequisites apply to all law enforcement officers certified by the council; the council may not certify officers who do not meet the certification requirements specified in this chapter. 1970 Op. Att'y Gen. No. 70-209 (see O.C.G.A. Ch. 8, T. 35).

Mandatory licensing requirements of O.C.G.A. §§ 16-11-126 through 16-11-129 apply to peace officer candidates. 1996 Op. Att'y Gen. No. 96-22.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 624 et seq. 67 C.J.S., Officers and Public Employees, §§ 22, 26 et seq.

35-8-10. Applicability and effect of certification requirements generally; requirements as to exempt persons.

(a) No person required to comply with the certification provisions of this chapter shall be employed or appointed by any law enforcement unit without certification from the council that the applicant has met the preemployment requirements established in this chapter, and no candidate shall perform any of the duties of a peace officer involving the power of arrest until such training shall have been successfully completed.

(b) Peace officers commencing any employment or service on any terms with the Department of Public Safety, counties, municipalities, the Georgia Bureau of Investigation, the Department of Natural Resources, the Department of Revenue, Alcohol and Tobacco Tax Unit, the Secretary of State's investigative section, the Office of the Commissioner of Insurance and Safety Fire Commissioner, or a railroad after July 1, 1975, are required to comply with the certification provisions of this chapter. Peace officers commencing such employment or service prior to July 1, 1975, and whose employment continues on July 1, 1975,

are exempt and excused from compliance with the certification provisions of this chapter except as provided in this Code section so long as the registration provided for in subsections (d) and (e) of this Code section remains in effect. Any peace officer otherwise exempt from the certification provisions of this chapter must meet the qualifications and requirements specified in paragraphs (2), (4), (5), and (8) of subsection (a) of Code Section 35-8-8.

(c) If, after July 1, 1975, any other employment or service is conditioned on compliance with this chapter, persons so employed or serving shall be required to comply with the certification provisions established in this chapter, except that persons so employed or serving whose employment or service commenced prior to and continues upon the effective date of the peace officer's law enforcement unit becoming subject to the provisions of this chapter shall be exempt and excused from compliance so long as registration provided for in subsections (d) and (e) of this Code section remains in effect. Notwithstanding this subsection, the effective date of requirements for certification or registration shall be determined by the council based upon identification of the applicability of this chapter to particular peace officers. Nothing in this subsection shall be deemed to grant an exemption to persons required to be certified by subsections (a) and (b) of this Code section.

(d) Peace officers exempt from the certification provisions of this chapter are required to register with the council. The registration shall remain in effect for the period of time said person is employed as a peace officer.

(e) Any registration granted in this Code section shall not terminate upon a subsequent employment or appointment as a peace officer, provided that subsequent employment or appointment as a peace officer is recognized by the council to be substantially the same or similar to the employment or appointment by virtue of which said peace officer was exempted and registered as such; provided, further, that such subsequent employment or appointment is commenced within 12 months of such prior termination as a peace officer.

(f) Except as otherwise provided by subsection (b) of this Code section, nothing in this subsection or in subsection (d) shall be deemed to require any exempt peace officer to comply with Code Sections 35-8-8 and 35-8-9 for the period of time the registration shall remain in effect.

(g) A peace officer excused from mandatory compliance with this chapter by this Code section may choose to be certified under this chapter. If so, the council shall have the authority to recognize instruction received by such a peace officer as equivalent to all or part of the instruction required for certification under this chapter.

(h) Any person who was serving as a sheriff on July 1, 1970, and who subsequently becomes a peace officer shall not be required to comply with this chapter.

(i) A retired peace officer may be voluntarily registered by the council as an exempt peace officer without meeting the qualifications and requirements specified in paragraphs (2), (4), (5), and (8) of subsection (a) of Code Section 35-8-8. Such registration of a retired peace officer shall not terminate, as provided for in subsection (e) of this Code section. Nothing in this subsection shall be deemed to grant an exemption to persons required to be certified or registered by this chapter. (Ga. L. 1970, p. 208, § 13; Ga. L. 1975, p. 1165, § 9; Ga. L. 1976, p. 395, § 8; Ga. L. 1977, p. 713, §§ 3-7; Ga. L. 1978, p. 1680, § 2; Ga. L. 1978, p. 2299, §§ 2-6; Ga. L. 1981, p. 778, §§ 2, 3; Ga. L. 1994, p. 1355, § 2; Ga. L. 2003, p. 331, § 2.)

Editor's notes. — Ga. L. 1993, p. 724, § 3, effective April 9, 1993, not codified by the General Assembly, provides: "Any person elected to the office of sheriff at the 1992 general election, which person is a registered peace officer as provided in Code Section 35-8-10, shall be exempt from any qualifications provided for sheriffs in an Act approved April 17, 1992 (Ga. L. 1992, p. 2112), which qualifications are in conflict with the provisions of this Act."

Paragraph (a)(8) of Code Section 35-8-8, referred to in this Code section, was redesignated as paragraph (a)(7) by Ga. L. 2008, p. 237, § 2/SB 373.

JUDICIAL DECISIONS

Cited in City of Pembroke v. Hagin, 194 Ga. App. 642, 391 S.E.2d 465 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Investigators. — O.C.G.A. § 35-8-6(c), which authorizes the Executive Director of the Georgia Peace Officer Standards and Training Council to appoint investigators with the power of arrest, allows for the appointment of officers exempted from the certification requirements by the grandfathering provisions in subsection (c) of O.C.G.A. § 35-8-10 whose registrations have remained in effect, and who are in compliance with the officers' training requirements. 1989 Op. Att'y Gen. No. U89-9.

Deputy sheriff subject to chapter. — Deputy sheriff having responsibility for county jail and arrest power is subject to Ga. L. 1970, p. 208 (see O.C.G.A. Ch. 8, T. 35); further, a person cannot be so employed without the certificate required by Ga. L. 1970, p. 208, § 13 (see O.C.G.A. § 35-8-10). 1971 Op. Att'y Gen. No. U71-128.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 48, 50 et seq., 76. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 624 et seq. 67 C.J.S., Officers and Public Employees, §§ 22, 26 et seq.

35-8-11. Basic course to be completed at schools certified by council.

The basic course provided for in Code Section 35-8-9 shall be completed at any school certified by the council which provides the course requirements and methods of instruction established by the council. (Ga. L. 1970, p. 208, § 10; Ga. L. 1975, p. 567, § 5; Ga. L. 1975, p. 1165, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 76. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 624 et seq. 67 C.J.S., Officers and Public Employees, §§ 22, 26 et seq.

35-8-12. Certification to use speed detection devices; withdrawal or suspension of certificate.

(a) Persons employed or appointed by any agency, organ, or department of this state or a subdivision or municipality thereof authorized to use speed detection devices shall be required to be certified by the council as qualified speed detection device operators. Each person operating radar speed or laser detection devices shall satisfactorily complete a course of instruction in the theory and application of speed detection device operation as a condition for certification. The council shall establish and modify the curriculum for the course of instruction, including a minimum number of hours. Persons authorized and qualified to conduct the course of instruction required by this Code section shall be certified by the council as speed detection device operator instructors upon complying with requirements prescribed by the council. The council shall have the authority to recognize instruction received by persons subject to the requirements of this Code section if, in the determination of the council, the instruction is at least equivalent to that required by this chapter. If the instruction is recognized, then it shall be accepted in lieu of part or parts of the minimum hours of instruction required for speed detection device certification by this chapter. Should any person fail to complete successfully the training requirements for operation of speed detection devices, he or she shall not perform any functions related to the use of the devices until such training shall have been successfully completed and until such time as the council shall issue appropriate certification. All persons certified to use speed detection devices shall complete an update or refresher training course of such duration and at such time as may be prescribed by the council in order for their speed detection device operators' certifications to remain in force and effect. The council is authorized to withdraw or suspend the certification of any person for failure to meet

the update or refresher requirements specified in this Code section or for violation of any portion of this chapter relating to conditions which may lead to the withdrawal or suspension of peace officer certification to operate radar or laser speed detection devices.

(b) Upon the withdrawal or suspension of any certificate to operate speed detection devices for the reasons set forth in this Code section, the executive director of the council shall notify the commissioner. The notification shall contain the officer's name and employing law enforcement agency.

(c) Upon receipt from the commissioner that a speed detection device permit has been suspended or revoked pursuant to Code Section 40-14-11, the council shall withdraw or suspend the certification to operate speed detection devices for every certified operator employed by the agency whose permit has been suspended or revoked. The period of withdrawal or suspension shall be consistent with the action taken by the department. (Ga. L. 1980, p. 979, § 3; Ga. L. 1996, p. 1281, § 2.)

Cross references. — Approval by counties and municipalities of use of speed detection devices within their jurisdiction, and regulation of use of speed detection devices, T. 40, C. 14.

Law reviews. — For review of 1996 use of radar speed detection devices legislation, see 13 Ga. St. U. L. Rev. 244 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Intent of General Assembly regarding certification of persons employed to use speed detection devices was to have people certified no matter which type of device is used as long as the device itself fits within the definition provided for under Ga. L. 1980, p. 979 (see O.C.G.A. § 35-8-2(11)). 1981 Op. Att'y Gen. No. 81-77.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 980, 981. 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S. — 22A C.J.S., Criminal Law, § 902. 63 C.J.S., Municipal Corporations, § 624 et seq. 67 C.J.S., Officers and Public Employees, §§ 22, 26 et seq.

35-8-13. Training and certification of police chaplains.

(a) In addition to the other powers vested in the council, the council may develop a training program and standards for certification of police chaplains. The council shall issue certificates to qualified police chaplains who desire to be certified and who meet the standards and complete the training program.

(b) The council may suspend or revoke the certification of any police chaplain who commits an offense or act set forth in paragraph (4) of Code Section 35-8-7.1.

(c) This Code section shall be optional for police chaplains and a person who is not certified pursuant to this Code section may serve as a police chaplain. (Ga. L. 1980, p. 1127, § 1; Ga. L. 1991, p. 94, § 35.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 22. 73 C.J.S., Public Administrative Law and Procedures, § 68 et seq.

35-8-13.1. Training and certification of municipal probation officers.

(a) Any person employed or appointed as a municipal probation officer on or after January 1, 1999, shall not be authorized to serve as a municipal probation officer unless such person has successfully completed a training course and received certification for municipal probation officers approved by the Georgia Peace Officer Standards and Training Council.

(b) Persons applying for certification and persons certified by the council under this Code section shall be subject to the powers and authority of the Georgia Peace Officer Standards and Training Council applicable to peace officers as defined in this chapter and shall be required to fulfill all of the requirements of a peace officer, except peace officer training requirements applicable to peace officers only. Such persons shall be required to register with the council. Such registration shall remain in effect for the period of time such person is employed as a municipal probation officer.

(c) Any person who registers with the council pursuant to this Code section shall not have such registration invalidated upon termination of employment or appointment as a municipal probation officer if subsequent employment or appointment as a municipal probation officer is commenced within 12 months of such prior termination of employment or appointment as a municipal probation officer.

(d) Any municipal probation officer exempted from mandatory compliance with this Code section may choose to be certified under this Code section. If so, the council shall have the authority to recognize instruction received by such municipal probation officer as equivalent to all or part of the instruction required for certification under this Code section.

(e) The term "municipal probation officer" as used in this Code section means only municipal probation officers employed directly by a

municipality or consolidated government and shall not include employees of private probation providers which contract with municipalities or consolidated governments in accordance with the provisions of Article 6 of Chapter 8 of Title 42; provided, however, that the term "municipal probation officer" shall not include probation officers of any municipal corporation which conducts a training course for such officers if such training course is approved by the Georgia Peace Officer Standards and Training Council.

(f) Any person who has completed the peace officer basic training course and is certified as a peace officer by the Georgia Peace Officer Standards and Training Council may serve as a municipal probation officer without obtaining the municipal probation officer training and certification required by this Code section. (Code 1981, § 35-8-13.1, enacted by Ga. L. 1998, p. 192, § 1.)

Cross references. — Prohibition, T. 42, C. 8.

35-8-14. Board of Corrections and State Board of Pardons and Paroles to establish training program for employees authorized to make arrests.

Repealed by Ga. L. 1982, p. 2478, § 9, effective November 1, 1982.

Editor's notes. — This Code section was based on Ga. L. 1978, p. 992, § 3; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1982, p. 3, § 35.

35-8-15. Preparation and maintenance of employment records by law enforcement units and council; release of records.

(a) Each law enforcement unit shall prepare duplicate records on any candidate or peace officer employed under this chapter as may be prescribed by the rules and regulations of the council. One copy of the records shall be maintained in the headquarters of the law enforcement unit; the second copy shall be forwarded to the council and shall be maintained by the council.

(b) The contents of the records provided for in subsection (a) of this Code section, except for court proceedings, shall be considered as confidential and shall be released only to the candidate or peace officer to whom they pertain or to a law enforcement unit considering the candidate or peace officer for employment. (Ga. L. 1970, p. 208, § 12; Ga. L. 1975, p. 1165, § 1.)

JUDICIAL DECISIONS

Agreement in violation of section void. — Purported agreement between a police officer and county human resources director that the officer would withdraw an appeal of termination if disciplinary materials were removed from the employee file to preserve the officer's Peace Officer Standards and Training Council (P.O.S.T.) certification was void and unenforceable because it would have violated not only the P.O.S.T. Council's regulations but also the record-keeping requirements of O.C.G.A. § 35-8-15 and the prohibition of O.C.G.A. § 35-8-7.2(a)(2) against knowingly making "misleading, deceptive, untrue, or fraudulent representations in the practice of being a peace officer or in any document connected therewith." Maner v. Chatham County, 246 Ga. App. 265, 540 S.E.2d 248 (2000).

35-8-16. Effect of standards and training requirements provided in chapter; adoption of additional requirements by law enforcement units.

This chapter establishes only the minimum qualification standards and training requirements for peace officers in this state; each law enforcement unit is encouraged to prescribe such additional requirements as it deems necessary and appropriate. (Ga. L. 1970, p. 208, § 11.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 22. 73 C.J.S., Public Administrative Law and Procedures, § 68 et seq.

35-8-17. Effect of peace officer's failure to comply with chapter generally; civil actions against noncomplying peace officers and law enforcement units.

(a) Any peace officer so employed who does not comply with this chapter shall not be authorized to exercise the powers of a law enforcement officer generally and particularly shall not be authorized to exercise the power of arrest.

(b) The council is authorized to bring a civil action against any peace officer who does not comply with this chapter to enjoin the peace officer from performing any and all functions of a peace officer, including the power of arrest, until the officer shall meet the certification or registration requirements of this chapter.

(c) The council is authorized to bring a civil action against any law enforcement unit which employs or appoints any peace officer who fails to meet the certification or registration requirements of this chapter to enjoin the law enforcement unit from allowing the peace officer to perform any and all peace officer functions, including exercising the power of arrest, until such time as the peace officer shall comply with

the certification or registration requirements of this chapter. (Ga. L. 1970, p. 208, § 15; Ga. L. 1975, p. 1165, § 11; Ga. L. 1977, p. 713, § 8; Ga. L. 1977, p. 1180, § 3.)

JUDICIAL DECISIONS

Noncompliance with the conditions of this chapter renders an arrest unauthorized. The noncomplying peace officer, however, may be authorized to effect an arrest, under certain circumstances, as a private citizen. Mason v. State, 147 Ga. App. 179, 248 S.E.2d 302 (1978); Williams v. State, 171 Ga. App. 807, 321 S.E.2d 386 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 966, 83 L. Ed. 2d 970 (1985) (see O.C.G.A. Ch. 8, T. 35).

Defendant's arrest by a DEA special agent for giving a false name to a law enforcement officer was not illegal merely because at the time of the arrest no writing existed making the agent a county sheriff's deputy as required by O.C.G.A. § 35-9-15(b) nor had the agent complied with the requirements of the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq. Fajardo v. State, 191 Ga. App. 295, 381 S.E.2d 560 (1989).

Objecting to legality of arrest insufficient to question officer's power to arrest. — Trial court did not err in refusing to give two requested charges on O.C.G.A. § 35-8-17, specifically on the principle that a law enforcement officer who has not been certified pursuant to O.C.G.A. Ch. 8, T. 35 does not have authority to exercise the power of arrest, since, although the defendant made an issue at trial of the legality of the defendant's arrest, no issue was made of the arresting officer's authority to exercise arrest powers generally. Gay v. State, 179 Ga. App. 430, 346 S.E.2d 877 (1986).

Certification requirements. — After the arresting officer met all requirements of O.C.G.A. § 35-8-8 and had successfully completed the course required by O.C.G.A. § 35-8-9, the arresting officer was not disqualified to make arrests on ground that the arresting officer had not yet been certified under O.C.G.A. § 35-8-7. Davis v. State, 164 Ga. App. 312, 295 S.E.2d 131 (1982).

Evidence seized by uncertified officer suppressed. — Noncompliance with the conditions of O.C.G.A. Ch. 8, T. 35 renders the exercise of any powers of a law enforcement officer unauthorized. Thus, due to an officer's lack of certification, the officer had no authority to apply for a search warrant, and the evidence seized pursuant to the execution of the illegal warrant should have been suppressed. Holstein v. State, 183 Ga. App. 610, 359 S.E.2d 360, cert. denied, 183 Ga. App. 906, 359 S.E.2d 360 (1987).

Evidence seized by uncertified officer not suppressed. — Trial court erred in suppressing contraband seized by an arresting officer who failed to maintain certification under the Georgia Police Officer Standards and Training statute, codified at O.C.G.A. § 35-8-17(a), as the legislature did not intend to invalidate, nullify, or otherwise make such arrest illegal. After the defendant was speeding in the officer's presence, the officer could conduct a search and after finding the defendant possessed marijuana, the officer could arrest the defendant. State v. Pinckney, 255 Ga. App. 692, 566 S.E.2d 325 (2002).

Indictment, trial, and conviction of a defendant is not "proceeding under" an arrest. It is inconceivable that the legislature intended to absolve an individual of all guilt of a crime charged merely because the individual's arrest was illegal. Hunt v. State, 134 Ga. App. 761, 216 S.E.2d 354 (1975).

Private civil action not available. — Although a city that formerly employed a police officer failed to disclose the safety violations that the officer committed, which were in the officer's personnel file, to a hiring city, the parents of a child who was fatally shot by the officer's service weapon due to the officer's possible safety negligence could not assert a private cause of action against the former city for violations of the requirements of the Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., as no such civil

liability was provided pursuant to O.C.G.A. § 35-8-17(b) or (c). Govea v. City of Norcross, 271 Ga. App. 36, 608 S.E.2d 677 (2004).

Cited in Tucker v. State, 131 Ga. App. 791, 207 S.E.2d 211 (1974); Rogers v. State, 133 Ga. App. 513, 211 S.E.2d 373 (1974); Campbell v. State, 136 Ga. App. 338, 221 S.E.2d 212 (1975); Davis v. State, 143 Ga. App. 329, 238 S.E.2d 289 (1977); Lemley v. State, 245 Ga. 350, 264 S.E.2d 881 (1980); Harvey v. State, 165 Ga. App. 7, 299 S.E.2d 61 (1983); City of Pembroke v. Hagin, 194 Ga. App. 642, 391 S.E.2d 465 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Authority of "registered" or "exempt" peace officers. — "Registered" or "exempt" peace officer who is in compliance with the requirements for certification under the Georgia Peace Officer Standards and Training Act, O.C.G.A. Ch. 8, T. 35, has the same authority and limitations as that of a "certified" peace officer in all respects relevant to law enforcement duties, including the ability to apply for a search warrant. 1999 Op. Att'y Gen. No. 99-7.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 22. 73 C.J.S., Public Administrative Law and Procedures, § 68 et seq.

35-8-18. Applicability of chapter to emergency peace officers.

This chapter shall not apply to emergency peace officers. (Ga. L. 1970, p. 208, § 14; Ga. L. 1975, p. 1165, § 10.)

35-8-19. Appointment of citizen of adjoining state as peace officer.

In each city of this state adjacent to the State of Georgia boundary line, the sheriff, mayor, or other person authorized to appoint peace officers may appoint as special deputy, special constable, marshal, policeman, or other peace officer a person who is not a citizen of Georgia but who is a citizen of an adjoining state, provided such appointed person is otherwise qualified to serve as a peace officer. (Code 1981, § 35-8-19, enacted by Ga. L. 1982, p. 2107, § 29; Ga. L. 1992, p. 1325, § 1.)

35-8-20. Training requirements for police chiefs, department heads, and wardens; effect of failure to fulfill training requirement; waiver of requirements.

(a) During calendar year 1985 and during each calendar year thereafter, the chief of police or department head of each law enforcement unit and wardens of state institutions shall complete 20 hours of training as provided in this Code section.

(b) The training required by subsection (a) of this Code section shall be completed in sessions as selected and provided or approved by the Georgia Association of Chiefs of Police or the Georgia Prison Wardens Association and which have been recognized by the Georgia Peace Officer Standards and Training Council.

(c) The salary and travel expenses of a chief of police or department head of a law enforcement unit or a warden of a state institution taking the required training shall be paid by the law enforcement unit by which he or she is employed.

(d) Any chief of police or department head of a law enforcement unit or a warden of a state institution who does not fulfill the training requirement of this Code section shall lose his or her power of arrest.

(e) A waiver of the requirement of training provided in this Code section may be granted by the Georgia Peace Officer Standards and Training Council, in its discretion, upon the presentation of evidence by a chief of police or department head of a law enforcement unit or a warden of a state institution that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council. (Code 1981, § 35-8-20, enacted by Ga. L. 1984, p. 1210, § 1; Ga. L. 1985, p. 149, § 35; Ga. L. 1993, p. 91, § 35; Ga. L. 1997, p. 542, § 1; Ga. L. 1997, p. 1488, § 5.)

35-8-20.1. Training for police chiefs and department heads appointed after June 30, 1999; waivers.

(a) Any newly appointed chief of police or department head of a law enforcement unit whose term of employment commences after June 30, 1999, shall successfully complete a minimum of 60 hours of law enforcement chief executive training at the next scheduled law enforcement chief executive training class sponsored by the Georgia Association of Chiefs of Police following his or her appointment. Such training shall be in addition to the basic training required of peace officers in Code Section 35-8-9. A sworn employee acting in the capacity of a department head of a law enforcement unit for more than 60 days shall be required to attend training specified under this Code section and Code Section 35-8-20. The provisions of this subsection shall not apply to any sheriff or to any head of any law enforcement unit within the office of sheriff.

(b) The training required by subsection (a) of this Code section shall be completed in sessions as selected and provided by the Georgia Association of Chiefs of Police which have been recognized by the Georgia Peace Officer Standards and Training Council.

(c) Reserved.

(d) The salary and travel expenses of a chief of police or department head of a law enforcement unit taking the required training shall be paid by the law enforcement unit by which he is employed.

(e) Any newly appointed chief of police or department head of a law enforcement unit who does not fulfill the training requirement of this Code section shall lose his power of arrest.

(f) Any newly appointed chief of police or department head of a law enforcement unit who satisfactorily completes the training required by subsection (a) of this Code section shall be exempted for the year in which he completes such training from the training required by subsection (a) of Code Section 35-8-20.

(g) A chief of police or head of a law enforcement department who successfully completes the training required by subsection (a) of this Code section will not be required to repeat such training if he terminates an appointment and is subsequently reappointed to the same or another department.

(h) A waiver of the requirement of training provided in this Code section may be granted by the Georgia Peace Officer Standards and Training Council, in its discretion, upon the presentation of evidence by a newly appointed chief of police or department head of a law enforcement unit that he or she has served as an appointed chief of police or head of a law enforcement unit since December 31, 1992, without more than a 60 day break in service, that he or she has satisfactorily completed training or education deemed by the council to be equivalent to the training required by this Code section, or that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(i) Any chief of police or department head of a law enforcement unit who is exempted from the training required by subsection (a) of this Code section may choose to attend such training in lieu of the training required by Code Section 35-8-20 for any year. (Code 1981, § 35-8-20.1, enacted by Ga. L. 1989, p. 1637, § 1; Ga. L. 1993, p. 1780, § 1; Ga. L. 1997, p. 542, § 2; Ga. L. 1997, p. 1488, § 6; Ga. L. 1999, p. 777, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "Georgia Peace Officer Standards and Training Council" was substituted for "Peace Officer Standards and Training Council" in subsection (h).

OPINIONS OF THE ATTORNEY GENERAL

Applicability of training requirement. — Newly appointed police chief who assumes a term of employment in a new police agency after December 31, 1992, must take the 60 hours of chief executive training unless the appointee has previously completed the training. 1996 Op. Att'y Gen. No. 96-16.

35-8-21. Training requirements for peace officers; waiver; exemption for retired peace officers.

(a) During calendar year 1999 and during each calendar year thereafter, any person employed or appointed as a peace officer shall complete 20 hours of training as provided in this Code section; provided, however, that any peace officer serving with the Department of Public Safety who is a commissioned officer shall receive annual training as specified by the commissioner of public safety.

(b) The training required by subsection (a) of this Code section shall be completed in sessions approved or recognized by the Georgia Peace Officer Standards and Training Council.

(c) Peace officers who satisfactorily complete the basic course of training in accordance with the provisions of this chapter after April 1 in any calendar year shall be excused from the minimum annual training requirement for the calendar year during which the basic course is completed.

(d) Any peace officer who does not fulfill the training requirements of this Code section shall lose his power of arrest.

(e) A waiver of the requirement of training provided in this Code section may be granted by the Georgia Peace Officer Standards and Training Council, in its discretion, upon the presentation of evidence by a peace officer that he was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(f) Any person who is registered or certified with the council as a retired peace officer is excused and exempt from compliance with this Code section. A retired peace officer may voluntarily comply with the requirements of this Code section and, in that event, such retired peace officer shall receive such minimal annual training without payment of any fees or costs, but only if sufficient class space is available. Nothing in this subsection shall be deemed to grant an exemption to persons required to complete the annual training requirement of this Code section. (Code 1981, § 35-8-21, enacted by Ga. L. 1988, p. 1063, § 1; Ga. L. 1999, p. 777, § 5; Ga. L. 2004, p. 986, § 2A.)

35-8-22. Reimbursement of training expenses by subsequent employer of peace officer; collection procedure; required documentation.

(a) Unless otherwise provided by an employment contract to the contrary, if the State of Georgia or any county or municipality thereof employs a peace officer and said peace officer is hired by another agency

within 15 months after completing mandated or formalized training requirements, then the total expense of training, including salary paid during training, shall be reimbursed by the hiring agency to the State of Georgia or any county or municipality thereof which initially paid for such training. If said officer is hired by another agency during a period of 15 to 24 months after mandated or formalized training requirements are completed, then one-half of the total expense of training, including salary paid during training, shall be reimbursed by the hiring agency to the State of Georgia or any county or municipality thereof which initially paid for such training. The council shall set standards for reimbursement by hiring agencies based upon actual expenses incurred in mandated or formalized training by individual departments.

(b) The State of Georgia or any county or municipality thereof which initially paid for the training of a peace officer shall submit an itemized, sworn statement to the new employer of the peace officer and shall demand payment thereof and may enforce collection of such obligation through civil remedies and procedures.

(c) Effective July 1, 2003, in order for the State of Georgia or any county or municipality thereof to demand reimbursement, the demanding governmental unit must be able to document that the peace officer in question signed an acknowledgment of the terms of this Code section or an employment contract specifying the provisions of this Code section prior to such peace officer's employment with the demanding governmental unit. Otherwise, this Code section shall not apply to such demand for reimbursement. (Code 1981, § 35-8-22, enacted by Ga. L. 1992, p. 1325, § 2; Ga. L. 2003, p. 327, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Reimbursement of training expenses. — Documentation requirement in O.C.G.A. § 35-8-22 does not prevent a governmental unit from seeking reimbursement after July 1, 2003, for the training of a peace officer hired before July 1, 2003. 2006 Op. Att'y Gen. No. U2006-2.

35-8-23. Basic training course for communications officers; certification requirements; duties of council; rules and regulations.

(a) As used in this Code section, the term "communications officer" means and includes any person employed by a local governmental agency to receive, process, or transmit public safety information and dispatch law enforcement officers, firefighters, medical personnel, or emergency management personnel.

(b) Any person employed on or after July 1, 1995, as a communications officer shall satisfactorily complete a basic training course approved by the council. Persons who are employed on July 1, 1994, shall

register with the council and may be certified by voluntarily complying with the certification process. Any person who fails to comply with the registration or certification process of the council shall not perform any duties of a communications officer and may have his or her certificate sanctioned or revoked.

(c) The council shall conduct administrative compliance reviews with respect to the requirements of this Code section. The council shall be authorized to promulgate rules and regulations to facilitate the administration and coordination of standards, certification, and compliance reviews consistent with the provisions of this Code section.

(d) On and after July 1, 1998, the basic training course for communications officers shall include training in the use of telecommunications devices for the deaf (TDD's), and no person shall on or after that date be certified by the council under this Code section unless such person has satisfactorily completed such training. (Code 1981, § 35-8-23, enacted by Ga. L. 1994, p. 1355, § 2.1; Ga. L. 1997, p. 1488, § 7; Ga. L. 1998, p. 540, § 1.)

35-8-24. Training requirements for jail officers and juvenile correctional officers.

(a)(1) Any person employed or appointed as a jail officer six months after January 1, 1999, shall not be authorized to serve as a jail officer in any detention facility after a certain date as provided in subsection (b) of this Code section unless such person has successfully completed a training course for jail officers approved by the Georgia Peace Officer Standards and Training Council.

(2) Any person employed or appointed as a juvenile correctional officer six months after January 1, 1999, shall not be authorized to serve as a juvenile correctional officer in any juvenile correctional facility after a certain date as provided in subsection (b) of this Code section unless such person has successfully completed a training course for juvenile correctional officers approved by the Georgia Peace Officer Standards and Training Council.

(b) Any person employed or appointed as a jail officer or juvenile correctional officer six months after January 1, 1999, shall have a period of six months from the date of initial employment to complete the required training course successfully. Any person who fails to complete such training course successfully within six months of the date of initial employment or appointment as a jail officer or as a juvenile correctional officer shall be prohibited from working as a jail officer in a detention facility or as a juvenile correctional officer in a juvenile correctional facility.

(c) Applicants and persons certified under this Code section shall be subject to the powers and authority of the Georgia Peace Officer

Standards and Training Council applicable to peace officers as defined in this chapter and shall be required to fulfill all requirements of a peace officer, except the requirements of paragraph (8) of subsection (a) of Code Section 35-8-8 and peace officer training requirements applicable to peace officers only.

(d) Persons employed or serving as jail officers or juvenile correctional officers whose employment or service commences prior to and continues on January 1, 1999, are exempt and excused from compliance with the certification provisions of this Code section.

(e) Jail officers or juvenile correctional officers exempt from the certification provisions of this Code section are required to register with the council. The registration shall remain in effect for the period of time said person is employed as a jail officer or as a juvenile correctional officer.

(f) Any registration granted in this Code section shall not become invalid upon termination of employment or appointment as a jail officer or juvenile correctional officer if subsequent employment or appointment as a jail officer or juvenile correctional officer is commenced within 12 months of such prior termination as a jail officer or a juvenile correctional officer.

(g) Any jail officer or juvenile correctional officer exempted from mandatory compliance with this Code section may choose to be certified under this Code section. If so, the council shall have the authority to recognize instruction received by such jail officer or juvenile correctional officer as equivalent to all or part of the instruction required for certification under this Code section. (Code 1981, § 35-8-24, enacted by Ga. L. 1995, p. 880, § 2; Ga. L. 2008, p. 237, § 3/SB 373.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "January 1, 1999," was substituted for "the effective date of this Act" in paragraphs (a)(1) and (a)(2), subsection (b), and subsection (d).

JUDICIAL DECISIONS

Cited in Grier v. State, 262 Ga. App. 777, 586 S.E.2d 448 (2003).

35-8-25. Training and certification of bomb technicians, explosive ordnance disposal technicians, and animal handlers; intergovernmental assistance agreements.

(a)(1) Any person who is employed by an agency or authority of this state or an agency or authority of a political subdivision of this state as a bomb technician, explosive ordnance disposal technician, handler of an animal trained to detect explosives, or any person who is assigned to such duties shall be required to complete successfully a

training program prescribed by the council which shall consist of an initial training program, an apprenticeship, and annual recertification.

(2) The council is authorized to award a distinctive device to any person certified as an explosive ordnance disposal technician or as a handler of an animal trained to detect explosives upon completion of the initial training program and apprenticeship period. The council may also establish and award distinctive devices for certified explosive ordnance disposal technicians who qualify as senior or master explosive ordnance disposal technicians. Such devices may be worn on any law enforcement officer's or fire official's uniform.

(b)(1) The head of any agency which employs one or more certified bomb technicians, explosive ordnance disposal technicians, handlers of animals trained to detect explosives, or emergency medical technicians or emergency medical professionals who provide medical support of explosive ordnance disposal operations may establish a mutual aid agreement with any other agency for the purpose of assisting with the detection, rendering safe, and disposal of destructive devices as such term is defined by Code Section 16-7-80. Any such mutual aid agreement shall be subject to approval of the governing authority of such agency.

(2) A political subdivision which is aided pursuant to this subsection shall reimburse the political subdivision providing the aid for any loss or damage to equipment other than fair wear and tear and shall pay any expenses incurred in the operation and maintenance of such equipment; provided, however, that no such claim shall be allowed unless, within 60 days after the same is sustained or incurred, the political subdivision providing the aid provides to the chief financial officer of the political subdivision receiving the aid an itemized notice of the claim made under oath. The political subdivision which received the aid shall also pay and reimburse the political subdivision furnishing the aid for any overtime compensation paid to any employee furnished under this Code section during the time of the rendering of the aid and shall defray the actual traveling and maintenance expenses of any employee while such employee was engaged in rendering the aid. Such reimbursement shall include any amounts paid or due for compensation due to personal injury or death while such employee was engaged in rendering the aid.

(3) Unless otherwise expressly provided by its terms, a mutual aid agreement established pursuant to this subsection shall not be construed as superseding or amending any mutual aid agreement adopted pursuant to Chapter 6 of Title 25, Chapter 69 of Title 36, or Chapter 3 of Title 38 which applies to emergencies involving explosives or destructive devices.

(c)(1) Whenever a bomb technician, explosive ordnance disposal technician, handler of an animal trained to detect explosive devices, or an emergency medical technician or emergency medical professional who provides medical support of explosive ordnance disposal operations employed by an agency or authority of local government provides assistance at the request of a state agency or authority, such person shall be considered an employee of this state for the purposes of Code Section 50-21-22, paragraph (3) of Code Section 34-9-1, and Code Section 45-9-3. Such person shall also be entitled to reimbursement by the requesting agency or authority for actual expenses incurred in the same manner as other employees of the agency or authority.

(2) A state agency or authority receiving assistance from an agency or authority of a local government shall reimburse such political subdivision for any loss or damage, other than fair wear and tear, to any equipment owned by such political subdivision. No claim for the loss, damage, or expense shall be allowed unless, within 60 days after the same is sustained or incurred, the local government submits an itemized notice of the claim under oath to the fiscal officer of the state agency or authority.

(3) A state agency or authority which receives aid from a local government shall also pay and reimburse such political subdivision for any overtime compensation paid to an employee furnished under this Code section during the time of the rendering of the aid. Such reimbursement shall include any amounts paid or due for compensation due to personal injury or death while such employee was engaged in rendering the aid.

(d) An employee of a political subdivision or agency or authority thereof who is engaged in the rendering of outside aid pursuant to a mutual aid agreement adopted pursuant to this Code section shall have the same powers, duties, rights, privileges, and immunities as if such employee was engaged in the performing of his or her duties in the political subdivisions in which he or she is normally employed.

(e) Any other provision of law to the contrary notwithstanding, any records, books, or documents, as such terms are defined by subsection (e) of Code Section 45-11-1, which are prepared for use in any training program conducted pursuant to the provisions of this Code section and any rules or regulations relating to such training which contain or may disclose techniques and procedures for the manufacture or rendering safe of any destructive device, as such term is defined by Code Section 16-7-80, or would disclose guidelines for law enforcement investigations or prosecutions of violations of the laws of this state or of the United States relating to destructive devices, explosives, or chemical, biological, or nuclear materials shall not be subject to public disclosure

pursuant to Article 5 of Chapter 11 of Title 9 or Chapter 16 of Title 17 or Article 4 of Chapter 18 of Title 50 unless the request for disclosure is served on the Attorney General as provided by Code Section 9-10-2 and a judge of the superior court finds that such disclosure is required to prevent a manifest injustice and that the information is not available from any other source. Any such order requiring disclosure shall impose such restrictions on access or copying of the material as will ensure that such material is not disclosed beyond that required to preserve the rights of the parties. Any order requiring disclosure of such material may be appealed by the district attorney of the circuit in which such order is entered or by the Attorney General. (Code 1981, § 35-8-25, enacted by Ga. L. 1996, p. 416, § 10; Ga. L. 1997, p. 160, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "paragraph (3) of Code Section 34-9-1" was substituted for "subsection (3) of Code Section 34-9-1" in paragraph (c)(1).

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 179 (1997).

For review of 1996 damage to and intrusion upon property legislation, see 13 Ga. St. U. L. Rev. 108 (1996).

35-8-26. (For effective date, see note.) TASER and electronic control weapons; requirements for use; establishment of policies; training.

(a) This Code section shall be known and may be cited as the "TASER and Electronic Control Weapons Act."

(b) It is the intent and purpose of the Georgia General Assembly to establish legal requirements for the official use of electronic control weapons and similar devices by law enforcement officers, including those officers employed in detention facilities, which requirements shall be consistent with generally accepted industry practices. It is the further intent of the General Assembly to require that such devices, commonly referred to as TASERs or stun-guns, which disrupt the central nervous system of the human body, be used for law enforcement purposes in a manner consistent with established standards and with federal and state constitutional provisions.

(c) A law enforcement unit authorizing the use of electronic control weapons or similar devices shall establish lawful written policies and directives providing for the use and deployment of such weapons and devices that are consistent with the training requirements established by the Georgia Peace Officer Standards and Training Council. The policies and directives required by this subsection shall be issued prior to the issuance of such devices.

(d) (For effective date, see note.) Prior to the official use of electronic control weapons or similar devices, peace officers authorized by the officer's law enforcement unit to use such devices shall be required to

satisfactorily complete a course of instruction and certification requirements approved by the council. All persons certified to use electronic control weapons shall complete an update or refresher training course of such duration and at such time as may be prescribed by the council in order for their electronic control weapons certification to remain in force and effect.

(e) A department head authorizing the use of an electronic control weapon or similar device or a peace officer using an electronic control weapon or similar device in violation of this Code section shall be subject to disciplinary action as provided for in this chapter. The council is authorized to withdraw or suspend the certification to operate an electronic control weapon of any person for failure to meet the update or refresher requirements specified in this Code section or for violation of any portion of this chapter relating to conditions which may lead to the withdrawal, suspension, or probation of a peace officer's certification.

(f) (For effective date, see note.) The Georgia Public Safety Training Center shall provide council approved training to peace officers for the use of electronic control weapons and similar devices. (Code 1981, § 35-8-26, enacted by Ga. L. 2006, p. 666, § 1/HB 1019.)

Delayed effective date. — Ga. L. 2006, p. 666, § 2, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 2007, excepting that provisions applying to council certification and provisions for training offered by the Georgia Public Safety Training Center shall become effective six months after the effective date of an appropriations Act containing a specific appropriation to fund certification by the council and training by the center." Funds were not appropriated at the 2006, 2007, 2008, 2009, 2010, 2011 or 2012 sessions of the General Assembly.

Effective date. — This Code section became effective January 1, 2007, except for subsections (d) and (f). For effective date of these subsections, see the delayed effective date note.

CHAPTER 9

SPECIAL POLICEMEN

Sec.
35-9-1. Definitions.
35-9-2. Appointment of special policemen upon application of Governor or subdivision of another state.
35-9-3. Form and content of application for appointment.
35-9-4. Qualifications for appointment.
35-9-5. Issuance of certificate of appointment; effect of certificate.
35-9-6. Oath of office.
35-9-7. Compensation.
35-9-8. Status as employee of state.
35-9-9. Powers and duties generally; wearing of special badge; reporting of change of address.
35-9-10. Special policemen subject to rules and regulations of appointing authority.
Sec.
35-9-11. Termination and revocation of appointment.
35-9-12. Immunity of state from liability for acts or omissions.
35-9-13. Governor authorized to apply to other states for appointment of special policemen; liability for compensation; effect of proceedings upon provision of normal police protection by other state.
35-9-14. Exercise of powers by person knowing of revocation of appointment; effect of filing and mailing of notice of revocation of appointment.
35-9-15. Appointment of law enforcement officer of United States or any state as officer of this state.

Cross references. — Special officers for protection of railroad property, § 46-8-230 et seq.

35-9-1. Definitions.

As used in this chapter, the term "appointing authority" means the Governor of this state or any officer or agency to whom the power to appoint and deputize special policemen is delegated.

35-9-2. Appointment of special policemen upon application of Governor or subdivision of another state.

Upon the application of the governor of any state or subdivision thereof owning or having an interest in any property situated wholly or partly in this state, the Governor of this state, or any officer or agency to whom or which he may delegate his powers and duties under this chapter, may appoint and deputize as special policemen, with the powers and duties provided for in Code Section 35-9-9, such number of persons designated in the application as may be deemed necessary for the additional protection of such property. (Ga. L. 1943, p. 595, § 1.)

Cross references. — Emergency powers of Governor, §§ 38-3-22, 38-3-51, 45-12-29 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 4, 5.

C.J.S. — 81A C.J.S., States, § 240 et seq.

35-9-3. Form and content of application for appointment.

Applications under Code Section 35-9-2 shall be made in writing upon forms prescribed by the appointing authority and shall contain the name, age, nationality, and address of each person for whom an appointment as special policeman is sought and such other information concerning the person as the appointing authority may require. (Ga. L. 1943, p. 595, § 2.)

35-9-4. Qualifications for appointment.

No person shall be appointed a special policeman under Code Sections 35-9-2 and 35-9-3, this Code section, and Code Sections 35-9-5 through 35-9-12 unless he is a citizen of the United States, is a person of good moral character, and has not previously been convicted of a felony. (Ga. L. 1943, p. 595, § 4; Ga. L. 1993, p. 91, § 35.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the provisions, decisions under former Penal Code 1910, § 337, are included in the annotations for this Code section.

De facto marshal has the same right to make an arrest as one regularly appointed. McDuffie v. State, 121 Ga. 580, 49 S.E. 708 (1905) (decided under former Penal Code 1910, § 337).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 624 et seq. 67 C.J.S., Officers and Public Employees, §§ 22, 59, 60. 73 C.J.S., Public Administrative Law and Procedures, § 68 et seq.

35-9-5. Issuance of certificate of appointment; effect of certificate.

(a) The appointing authority shall issue a certificate of appointment to each person appointed as a special policeman under Code Sections 35-9-2 through 35-9-4, this Code section, and Code Sections 35-9-6 through 35-9-14 in such form as it may prescribe.

(b) The certificate of appointment shall constitute the appointee's authority for exercising the powers and carrying out the duties conferred and imposed upon him by Code Sections 35-9-2 through 35-9-4, this Code section, and Code Sections 35-9-6 through 35-9-12. (Ga. L. 1943, p. 595, § 3; Ga. L. 1993, p. 91, § 35.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 12.
C.J.S. — 63 C.J.S., Municipal Corporations, § 628 et seq. 67 C.J.S., Officers and Public Employees, §§ 67, 111.

35-9-6. Oath of office.

Each person appointed under Code Sections 35-9-2 through 35-9-5, this Code section, and Code Sections 35-9-7 through 35-9-12 shall, within 15 days after his certificate of appointment has been issued and before entering upon the duties of his office, take and subscribe the oath prescribed by Code Section 45-3-1 and file it in the office of the appointing authority. (Ga. L. 1943, p. 595, § 4; Ga. L. 1993, p. 91, § 35.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 14.

35-9-7. Compensation.

The compensation of a special policeman shall be fixed in such amount as may be agreed upon between him and the state, political subdivision, department, agency, or district requesting his employment; and the latter shall be liable for the payment thereof. (Ga. L. 1943, p. 595, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 5, 271 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, §§ 40, 41.
C.J.S. — 63 C.J.S., Municipal Corporations, § 634 et seq. 67 C.J.S., Officers and Public Employees, § 270 et seq.

35-9-8. Status as employee of state.

Each person appointed as a special policeman under Code Sections 35-9-2 through 35-9-7, this Code section, and Code Sections 35-9-9 through 35-9-12 shall for all purposes be deemed to be an employee of the state, political subdivision, department, agency, or district requesting his appointment. (Ga. L. 1943, p. 595, § 6; Ga. L. 1993, p. 91, § 35.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 1, 7. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 1.

C.J.S. — 62 C.J.S., Municipal Corporations, § 573 et seq. 67 C.J.S., Officers and Public Employees, §§ 2, 3.

35-9-9. Powers and duties generally; wearing of special badge; reporting of change of address.

(a) Each person appointed as a special policeman under Code Sections 35-9-2 through 35-9-8, this Code section, and Code Sections 35-9-10 through 35-9-12 shall:

(1) Be charged with the duty of protecting and preserving the property described in the application for his appointment;

(2) Have power to arrest all persons trespassing or committing offenses or crimes on the property described in the application for his appointment;

(3) Have and may exercise the powers of a peace officer, but only upon the property or in connection with the property described in the application for his appointment; and

(4) Have power to possess and carry such firearms and other weapons while on duty as may be prescribed by the appointing authority.

(b) When on duty, a special policeman shall wear a metallic badge upon which shall be inscribed the words "special policeman."

(c) Whenever a person appointed as a special policeman shall change his residence, he shall forthwith give notice of his new address to the appointing authority. (Ga. L. 1943, p. 595, § 5; Ga. L. 1993, p. 91, § 35.)

OPINIONS OF THE ATTORNEY GENERAL

Limitation on authority. — Special policemen may not be appointed pursuant to O.C.G.A. §§ 35-9-1 through 35-9-14 by a political subdivision of this state for such purposes as enforcement of traffic laws and ordinances. 1999 Op. Att'y Gen. No. 99-6.

Property in need of "protecting and preserving" must be property which is owned or in which an interest is held by a foreign state, political subdivision, department, agency, or district requesting appointment of a special policeman. 1999 Op. Att'y Gen. No. 99-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 230.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 224, 225.

35-9-10. Special policemen subject to rules and regulations of appointing authority.

Every special policeman appointed under Code Sections 35-9-2 through 35-9-9, this Code section, and Code Sections 35-9-11 and 35-9-12 shall at all times be subject to the rules and regulations of the appointing authority and to the supervision and control of such person or persons as the Governor of this state may from time to time designate. (Ga. L. 1943, p. 595, § 9; Ga. L. 1993, p. 91, § 35.)

35-9-11. Termination and revocation of appointment.

(a) The appointment of any special policeman under Code Sections 35-9-2 through 35-9-10, this Code section, and Code Section 35-9-12 shall terminate and his authority thereunder shall cease whenever the governor of the state requesting his appointment shall file a notice in the office of the appointing authority, in such form as the latter may prescribe, to the effect that his services are no longer required.

(b) The appointing authority shall also have power, on its own motion at any time and for any reason or cause deemed sufficient by the appointing authority, to revoke the appointment of any special policeman by filing a revocation thereof in its office and mailing a notice of such filing to the governor of the state requesting his appointment and also to the person whose appointment is revoked at his address as it appears in the application for appointment or the latest statement thereof on file. (Ga. L. 1943, p. 595, § 8; Ga. L. 1993, p. 91, § 35.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 100 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 624 et seq. 67 C.J.S., Officers and Public Employees, § 56.

35-9-12. Immunity of state from liability for acts or omissions.

Neither this state nor any political subdivision of this state nor any department, officer, board, bureau, or other agency of either the state or any political subdivision thereof shall be liable or accountable in any way for or on account of the appointment of any special policeman or for or on account of any act or omission on the part of any special policeman in connection with his powers and duties under Code Sections 35-9-2 through 35-9-11 and this Code section. (Ga. L. 1943, p. 595, § 7; Ga. L. 1993, p. 91, § 35.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 303, 304, 308, 322 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 98, 121.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 640 et seq., 646 et seq. 67 C.J.S., Officers and Public Employees, § 247 et seq. 81A C.J.S., States, §§ 313, 314.

ALR. — Civil liability of law enforcement officers for malicious prosecution, 28 ALR2d 646; 81 ALR4th 1031.

Governmental tort liability for failure to provide police protection to specifically threatened crime victim, 46 ALR4th 948.

35-9-13. Governor authorized to apply to other states for appointment of special policemen; liability for compensation; effect of proceedings upon provision of normal police protection by other state.

(a) The Governor of this state is authorized, in his discretion, to make application to the governor of any other state for the appointment of special policemen for the additional protection of any property situated wholly or partly in such other state, which property is owned by this state or any subdivision thereof or in which this state or any subdivision thereof has any interest.

(b) This state or the subdivision thereof owning or having an interest in the property for the protection of which any such special policeman is appointed shall be liable for the compensation and expenses of such policeman and shall have full power and authority to provide or otherwise arrange for the payment of such compensation and expenses.

(c) Nothing contained in this Code section shall be construed to relieve the state or the political subdivision thereof in which such property is wholly or partly located from providing such normal police protection as it ordinarily and customarily provides for other property situated therein. (Ga. L. 1943, p. 595, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 4, 5.

C.J.S. — 81A C.J.S., States, § 240 et seq.

35-9-14. Exercise of powers by person knowing of revocation of appointment; effect of filing and mailing of notice of revocation of appointment.

Any person knowing of the revocation of his appointment as a special policeman or having in any manner received notice thereof who exercises or attempts to exercise any of the powers of a special policeman under Code Sections 35-9-2 through 35-9-12 shall be guilty of a misdemeanor. The filing and mailing of the notice of revocation of the appointment as provided in Code Section 35-9-11 shall be presumptive

evidence that the person whose appointment was revoked knew of the revocation. (Ga. L. 1943, p. 595, § 8.)

35-9-15. Appointment of law enforcement officer of United States or any state as officer of this state.

(a) On request of the sheriff or the chief or director of a law enforcement agency of this state or of any political subdivision thereof, and with the consent of the employee concerned, a law enforcement officer of the United States or any of the several states may be appointed as a law enforcement officer of this state for the purpose of providing mutual assistance in the enforcement of the laws of this state or of the United States. A law enforcement officer who is appointed pursuant to this Code section shall be considered a law enforcement officer of the appointing agency and shall have the same powers, duties, privileges, and immunities as a law enforcement officer employed by the appointing agency.

(b) Any such appointment shall be in writing, signed by the sheriff or the chief or director of the appointing agency, and shall specify the powers, duties, and responsibilities of the employee so appointed. Such appointment shall be at the pleasure of the sheriff or the chief or director of the appointing law enforcement agency. The appointment shall terminate if the person appointed ceases to be employed by an agency of the United States or of the several states. A copy of the appointment shall be filed in the executive office of the appointing agency.

(c) In lieu of any other oath prescribed by the laws of this state, a law enforcement officer appointed pursuant to this Code section shall take an oath to support and defend the Constitution of this state and to execute well and faithfully the laws of this state during the term of such appointment.

(d) As used in this Code section, the term "law enforcement agency" includes, but is not limited to, any sheriff's office, municipal police department, county police department, prosecuting attorney's office, or any agency of the state or a political subdivision of this state whose employees are authorized to enforce the laws of this state.

(e) The following laws shall not apply to law enforcement officers appointed pursuant to this Code section:

(1) Code Section 45-2-1, relating to persons ineligible to hold civil office; and

(2) Chapter 8 of this title, known as the "Georgia Peace Officer Standards and Training Act." (Ga. L. 1982, p. 1089, § 1; Code 1981,

§ 35-9-15, enacted by Ga. L. 1982, p. 1089, § 4; Ga. L. 2012, p. 775, § 35/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "Chapter 8 of this title," for "Chapter 8 of Title 35," in paragraph (e)(2).

OPINIONS OF THE ATTORNEY GENERAL

Qualifications of appointee. — While the Georgia Peace Officer Standards and Training Act, O.C.G.A. Ch. 8, T. 35, does not apply to a person appointed pursuant to O.C.G.A. § 35-9-15, such person must be a law enforcement officer of the United States or of any state prior to such appointment. 1999 Op. Att'y Gen. No. 99-6.

Authority of out-of-state trooper. — Absent a written appointment as a special policeman pursuant to O.C.G.A. § 35-9-15 by an authorized agency of this state, an out-of-state trooper who is in official attendance with a visiting professional or school athletic team is a private citizen with no law enforcement powers beyond those possessed by any private citizen. 1987 Op. Att'y Gen. No. 87-14.

Off-duty military police may not be employed by a chief of police as part-time city police officers. 1991 Op. Att'y Gen. No. 91-3.

CHAPTER 10

MUNICIPAL AND COUNTY POLICE DEPARTMENTS' NOMENCLATURE

Sec.
35-10-1. Short title.
35-10-2. Declaration of public purpose.
35-10-3. Definitions.
35-10-4. Prohibition against use of nomenclature pertaining to particular police department in connection with solicitation, advertisement, publication, or production.
35-10-5. Prohibition against use of symbols pertaining to particular police department in connection with solicitation, advertisement, publication, or production.
35-10-6. Procedure for obtaining permission to use nomenclature or symbols; discretion of local governing body.
35-10-7. Injunctions against violations.
35-10-8. Criminal penalties.
35-10-9. Actions for civil damages.
35-10-10. Criminal penalties.
35-10-11. Name required on vehicles used to enforce traffic laws.

Editor's notes. — Ga. L. 1996, p. 445, § 1, effective April 2, 1996, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 35-10-1 through 35-10-8 and was based on Code 1981, §§ 35-10-1 through 35-10-8, enacted by Ga. L. 1994, p. 1392, § 1.

35-10-1. Short title.

This chapter shall be known and may be cited as the "Municipal and County Police Departments' Nomenclature Act of 1996." (Code 1981, § 35-10-1, enacted by Ga. L. 1996, p. 445, § 1.)

JUDICIAL DECISIONS

Cited in Local 491 v. Gwinnett County, 510 F. Supp. 2d 1271 (N.D. Ga. 2007).

35-10-2. Declaration of public purpose.

It is declared to be contrary to the health, safety, and public welfare of the people of this state for any individual or organization to act in a manner which would mislead the public into believing that a member of the public is dealing with any municipal or county police department or with a member thereof when in fact the individual or organization is not the municipal or county police department or a member thereof. Furthermore, the municipal or county police department, which has provided quality law enforcement services to the citizens of this state, has established a name for excellence in its field. This name should be

protected for the department, its members, and the citizens of this state. Therefore, no person or organization should be allowed to use any municipal or county police department's name or any term used to identify the department or its members without the expressed permission of the local governing authority. The provisions of this chapter are in furtherance of the promotion of this policy. (Code 1981, § 35-10-2, enacted by Ga. L. 1996, p. 445, § 1.)

35-10-3. Definitions.

As used in this chapter, the term:

(1) "Badge" means any official badge used in the past or present by members of municipal or county police departments.

(2) "Chief of police" means the chief of police for any municipal or county police department.

(3) "Department" means any municipal or county police department.

(4) "Director of public safety" means the director of public safety for any municipal or county police department.

(5) "Emblem" means any official patch or other emblem worn currently or formerly or used by the department to identify the department or its employees.

(6) "Local governing authority" means, with respect to a county, the governing authority of the county and, with respect to a municipality, the governing authority of the municipality.

(7) "Person" means any person, corporation, organization, or political subdivision of this state.

(8) "Willful violator" means any person who knowingly violates the provisions of this chapter. Any person who violates this chapter after being advised in writing by the local governing authority that such person's activity is in violation of this chapter shall be considered a willful violator and shall be considered in willful violation of this chapter. Any person whose agent or representative is a willful violator and who has knowledge of the violation by the agent or representative shall also be considered a willful violator and in willful violation of this chapter, unless upon learning of the violation he or she immediately terminates the agency or other relationship with such violator. (Code 1981, § 35-10-3, enacted by Ga. L. 1996, p. 445, § 1.)

35-10-4. Prohibition against use of nomenclature pertaining to particular police department in connection with solicitation, advertisement, publication, or production.

Whoever, except with the express written permission of the local governing authority, knowingly uses words pertaining to a particular municipal or county police department in connection with the planning, conduct, or execution of any solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production in a manner reasonably calculated to convey the impression that such solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production is approved, endorsed, or authorized by or associated with the department shall be in violation of this chapter. (Code 1981, § 35-10-4, enacted by Ga. L. 1996, p. 445, § 1.)

35-10-5. Prohibition against use of symbols pertaining to particular police department in connection with solicitation, advertisement, publication, or production.

Any person who uses or displays any current or historical symbol, including any emblem, seal, or badge, used by the department in connection with the planning, conduct, or execution of any solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production in a manner reasonably calculated to convey the impression that such solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production is approved, endorsed, or authorized by or associated with the department without written permission from the local governing authority shall be in violation of this chapter. (Code 1981, § 35-10-5, enacted by Ga. L. 1996, p. 445, § 1.)

35-10-6. Procedure for obtaining permission to use nomenclature or symbols; discretion of local governing body.

Any person wishing permission to use the nomenclature or a symbol of a department may submit a written request for such permission to the chief of police or director of public safety. Within 15 calendar days after receipt of the request, the chief of police or director of public safety shall send a notice with his or her recommendation to the local governing authority stating whether the person may use the requested nomenclature or symbol. Within 30 calendar days after receipt of a recommendation from the chief of police or director of public safety, the local governing authority shall send a notice to the requesting party of

their decision on whether or not the person may use the requested nomenclature or symbol. If the local governing authority does not respond within the 30 day time period, then the request is presumed to have been approved. The grant of permission under Code Section 35-10-4 or 35-10-5 shall be in the discretion of the local governing authority under such conditions as the local governing authority may impose. (Code 1981, § 35-10-6, enacted by Ga. L. 1996, p. 445, § 1; Ga. L. 1999, p. 81, § 35.)

35-10-7. Injunctions against violations.

Whenever there shall be an actual or threatened violation of Code Section 35-10-4 or 35-10-5, the local governing authority shall have the right to apply to the superior court of the county of residence of the violator for an injunction to restrain the violation. (Code 1981, § 35-10-7, enacted by Ga. L. 1996, p. 445, § 1.)

35-10-8. Criminal penalties.

In addition to any other relief or sanction for a violation of Code Section 35-10-4 or 35-10-5, where the violation is willful, the local governing authority shall be entitled to collect a civil penalty in the amount of $500.00 for each violation. Further, when there is a finding of willful violation, the local governing authority shall be entitled to recover reasonable attorney's fees for bringing any action against the violator. The local governing authority shall be entitled to seek civil sanctions in the superior court in the county of residence of the violator. (Code 1981, § 35-10-8, enacted by Ga. L. 1996, p. 445, § 1.)

35-10-9. Actions for civil damages.

Any person who has given money or any other item of value to another person due in part to such person's use of department nomenclature or symbols in violation of this chapter may maintain a suit for damages against the violator. Where it is proven that the violation was willful, the victim shall be entitled to recover treble damages, punitive damages, and reasonable attorney's fees. (Code 1981, § 35-10-9, enacted by Ga. L. 1996, p. 445, § 1.)

35-10-10. Criminal penalties.

Any person who violates the provisions of this chapter shall be guilty of a felony and upon conviction thereof shall be subject to a fine of not less than $1,000.00 or more than $5,000.00 or to imprisonment for not less than one or more than five years, or both. Each violation shall constitute a separate offense. (Code 1981, § 35-10-10, enacted by Ga. L. 1996, p. 445, § 1.)

35-10-11. Name required on vehicles used to enforce traffic laws.

No law enforcement agency shall enforce the traffic laws of this state or any traffic ordinances with any name of law enforcement authority on its vehicles other than the name of the applicable county or municipality or the state. (Code 1981, § 35-10-11, enacted by Ga. L. 1996, p. 445, § 1.)

TITLE 36

LOCAL GOVERNMENT

Provisions Applicable to Counties Only

Chap.

1. General Provisions, 36-1-1 through 36-1-26.
2. Militia Districts, 36-2-1 through 36-2-7.
3. County Boundaries, 36-3-1 through 36-3-27.
4. Change or Removal of County Site, 36-4-1 through 36-4-6.
5. Organization of County Government, 36-5-1 through 36-5-29.
6. County Treasurer, 36-6-1 through 36-6-28.
7. County Surveyor, 36-7-1 through 36-7-16.
8. County Police, 36-8-1 through 36-8-7.
9. County Property Generally, 36-9-1 through 36-9-11.
10. Public Works Contracts, 36-10-1 through 36-10-5.
11. Claims Against Counties, 36-11-1 through 36-11-7.
12. Supervision and Support of Paupers, 36-12-1 through 36-12-5.
13. Building, Electrical, and Other Codes, 36-13-1 through 36-13-12.
14. County Bridges, 36-14-1 through 36-14-3.
15. County Law Library, 36-15-1 through 36-15-12.
16. County Historical Container, 36-16-1 through 36-16-5.
17. Grants of State Funds to Counties, 36-17-1 through 36-17-25.
18. Regulation of Cable Television Systems, 36-18-1 through 36-18-5.
19. Immunity From Antitrust Liability, 36-19-1 and 36-19-2. [Redesignated]
20. County Leadership Training, 36-20-1 through 36-20-9.
21. Group Health Benefits Program, 36-21-1 through 36-21-10.

22. Land Conservation, 36-22-1 through 36-22-15. [Redesignated]

23 through 29. Reserved.

Provisions Applicable to Municipal Corporations Only

30. General Provisions, 36-30-1 through 36-30-13.

31. Incorporation of Municipal Corporations, 36-31-1 through 36-31-12.

32. Municipal Courts, 36-32-1 through 36-32-40.

33. Liability of Municipal Corporations for Acts or Omissions, 36-33-1 through 36-33-6.

34. Powers of Municipal Corporations Generally, 36-34-1 through 36-34-8.

35. Home Rule Powers, 36-35-1 through 36-35-8.

36. Annexation of Territory, 36-36-1 through 36-36-119.

37. Acquisition and Disposition of Real and Personal Property Generally, 36-37-1 through 36-37-10.

38. Bonds, 36-38-1 through 36-38-23.

39. Street Improvements, 36-39-1 through 36-39-34.

40. Grants of State Funds to Municipal Corporations, 36-40-1 through 36-40-46.

41. Urban Residential Finance Authorities for Large Municipalities, 36-41-1 through 36-41-13.

42. Downtown Development Authorities, 36-42-1 through 36-42-16.

43. City Business Improvement Districts, 36-43-1 through 36-43-9.

44. Redevelopment Powers, 36-44-1 through 36-44-23.

45. Municipal Training, 36-45-1 through 36-45-20.

46 through 59. Reserved.

Provisions Applicable to Counties and Municipal Corporations

60. General Provisions, 36-60-1 through 36-60-26.

61. Urban Redevelopment, 36-61-1 through 36-61-19.

62. Development Authorities, 36-62-1 through 36-62-14.

62A. Conduct of Members of Local Authorities, 36-62A-1 through 36-62A-22.

63. Resource Recovery Development Authorities, 36-63-1 through 36-63-11.

64. Recreation Systems, 36-64-1 through 36-64-15.

65. Immunity from Antitrust Liability, 36-65-1 through 36-65-2.

66. Zoning Procedures, 36-66-1 through 36-66-6.

66A. Transfer of Development Rights, 36-66A-1 through 36-66A-2.

66B. Advanced Broadband Collocation, 36-66B-1 through 36-66B-4.

67. Zoning Proposal Review Procedures, 36-67-1 through 36-67-6. [Repealed]

67A. Conflict of Interest in Zoning Actions, 36-67A-1 through 36-67A-6.

68. Merger of Municipal Government with County, 36-68-1 through 36-68-4.

69. Mutual Aid, 36-69-1 through 36-69-10.

69A. Interlocal Cooperation, 36-69A-1 through 36-69A-9.

70. Coordinated and Comprehensive Planning and Service Delivery by Counties and Municipalities, 36-70-1 through 36-70-28.

71. Development Impact Fees, 36-71-1 through 36-71-13.

72. Abandoned Cemeteries and Burial Grounds, 36-72-1 through 36-72-16.

73. Contracts for Regional Facilities, 36-73-1 through 36-73-4.

74. Local Government Code Enforcement Boards, 36-74-1 through 36-74-50.

75. War on Terrorism Local Assistance, 36-75-1 through 36-75-13.

76. Expedited Franchising of Cable and Video Services, 36-76-1 through 36-76-11.

77 through 79. Reserved.

Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities

80. General Provisions, 36-80-1 through 36-80-23.
81. Budgets and Audits, 36-81-1 through 36-81-20.
82. Bonds, 36-82-1 through 36-82-256.
83. Local Government Investment Pool, 36-83-1 through 36-83-8.
84. Purchasing Preferences, 36-84-1.
85. Interlocal Risk Management Agencies, 36-85-1 through 36-85-20.
86. Local Government Efficiency, 36-86-1 through 36-86-4.
87. Participation in Federal Programs, 36-87-1 through 36-87-2.
88. Enterprise Zones, 36-88-1 through 36-88-10.
89. Homeowner Tax Relief Grants, 36-89-1 through 36-89-6.
90. Local Government Cable Fair Competition, 36-90-1 through 36-90-8.
91. Public Works Bidding, 36-91-1 through 36-91-102.
92. Waiver of Immunity for Motor Vehicle Claims, 36-92-1 through 36-92-5.
93. Infrastructure Development Districts, 36-93-1 through 36-93-26. [Repealed]

Cross references. — Definition of term "county governing authority" as used in laws of state, § 1-3-3(7). Establishment, powers, duties, and responsibilities of county board of health in each county of state, T. 31, C. 3. Jurisdiction and authority of counties as to public roads generally, § 32-4-40 et seq. Authority of counties to license roadhouses, public dance halls, and similar establishments, § 43-21-50 et seq. Prohibition against requiring municipal or county officers or employees to reside within boundaries of municipality or county, § 45-2-5. Purchase of liability insurance for members of municipal, county, or other governing bodies, § 45-9-20 et seq. Contracts between counties and State Personnel Board relating to inclusion of county employees in health insurance plans established under T. 45, C. 18, A. 1. County taxation generally, § 48-5-220 et seq. Creation, powers, and duties of area planning and development commissions, § 50-8-30 et seq.

Law reviews. — For article, "The Use of the Police Power by Local Governments and Some Problems of Intergovernmental Relations," see 8 J. Pub. L. 109 (1959). For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000). For article, "Discretion in Georgia Local Government Law," see 8 Ga. L. Rev. 614 (1974). For article analyzing the changing relationship between state and local gov-

ernments in Georgia in light of "Amendment 19," see 9 Ga. L. Rev. 757 (1975). For article, "Selected Oddities in Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975). For article discussing developments in Georgia's local government law in 1976 and 1977, see 29 Mercer L. Rev. 189 (1977). For article surveying Georgia cases in the area of local government law from June 1977 through May 1978, see 30 Mercer L. Rev. 133 (1978). For annual survey on local government law, see 36 Mercer L. Rev. 255 (1984). For article surveying local government law in 1984-1985, see 37 Mercer L. Rev. 313 (1985). For annual survey of local government law, see 39 Mercer L. Rev. 275 (1987). For annual survey of local government law, see 40 Mercer L. Rev. 303 (1988). For annual survey of local government law, see 42 Mercer L. Rev. 359 (1990). For annual survey of local government law, see 43 Mercer L. Rev. 317 (1991). For annual survey article on local government law, see 45 Mercer L. Rev. 325 (1993). For annual survey article on local government law, see 46 Mercer L. Rev. 363 (1994). For student article, "Georgia Local Government Law: Court Resolution of County Government Disagreements," see 46 Mercer L. Rev. 599 (1994). For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998). For annual survey article discussing local government law, see 51 Mercer L. Rev. 397 (1999). For article on cases in which the supreme court reversed the court of appeals on the subject of local government law, see 56 Mercer L. Rev. 1 (2004).

For annual survey article on local government law, see 49 Mercer L. Rev. 215 (1997).

Provisions Applicable to Counties Only

CHAPTER 1

GENERAL PROVISIONS

Sec.
36-1-1. Names of counties.
36-1-2. Extent of jurisdiction of counties divided by water.
36-1-3. County a body corporate; power to sue and be sued generally.
36-1-4. When county liable to be sued.
36-1-5. Service upon county.
36-1-6. Publication of annual financial statement; contents.
36-1-7. Submission to grand jury of sworn returns of receipts and disbursements; approval or disapproval; appearance to explain errors; failure to make return.
36-1-8. Investment of certain tax proceeds in authorized bonds; registration of bonds.
36-1-9. Payment into county treasury.
36-1-10. Employment of accountant to examine books.
36-1-11. Additional temporary personnel and equipment for assistance of county officers or departments.
36-1-11.1. Expenditure of funds for insurance and employment benefits.
36-1-12. Courthouse to remain open during normal working hours.
36-1-13. Speculation in county orders by county officer.
36-1-14. Interested transactions prohibited; removal from office for violation.
36-1-15. Prohibition, regulation, and taxation of fortunetelling and similar practices.
36-1-16. Garbage, trash, waste, or refuse not to be transported across state or county boundaries for dumping without permission; exemption.
36-1-17. Authority of county employees to issue citations for violation of ordinances and regulations in counties having population of 550,000 or more; jurisdiction; effect of failure to respond.
36-1-18. Authority of counties having population of 550,000 or more to assess against cost of repairing streets as necessitated by private construction activity; liens.
36-1-19. Appropriation for charitable grants or contributions in counties having population greater than 550,000; establishment of boards or councils to devise procedures and advise governing authority [Repealed].
36-1-19.1. Appropriations for charitable grants or contributions in counties having population of 400,000 or more; boards or councils to establish procedures and advise governing authorities.
36-1-20. Ordinances for governing and policing of unincorporated areas of county.
36-1-21. Civil service system for county employees.
36-1-22. Business and occupational license taxes and fees [Repealed].
36-1-23. Purchase from county of materials used in the construction of water systems, sewer systems, storm and drainage systems, buildings, or other facilities.
36-1-24. Training classes for clerks of governing authority of county.
36-1-25. Official minutes of meetings.
36-1-26. Contracts for utility services; terms and conditions.

Law reviews. — For annual survey of local government law, see 35 Mercer L. Rev. 233 (1983).

RESEARCH REFERENCES

ALR. — Liability to refund local taxes as within coverage of liability insurance, 21 ALR4th 895.

36-1-1. Names of counties.

The state is divided into 159 counties, whose boundaries and limits shall be ascertained by the several Acts laying off the same and those Acts amendatory thereof. The names of the counties are as follows: Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Carroll, Catoosa, Charlton, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, and Worth. (Orig. Code 1863, § 30; Code 1868, § 28; Code 1873, § 28; Code 1882, § 28; Civil Code 1895, § 29; Civil Code 1910, § 31; Code 1933, § 23-101.)

Cross references. — Limitation of number of counties to 159, Ga. Const. 1983, Art. IX, Sec. I, Para. II. Prohibition of creation of new counties other than by consolidation or merger of existing counties, Ga. Const. 1983, Art. IX, Sec. I, Para. II.

Editor's notes. — For laws creating counties, changing county boundaries or names, or otherwise affecting counties, see the Local Laws Index of this Code.

JUDICIAL DECISIONS

Cited in Bearden v. Baldwin, 174 Ga. 191, 162 S.E. 802 (1931).

OPINIONS OF THE ATTORNEY GENERAL

County name may be changed by statute. 1945-47 Op. Att'y Gen. p. 65.

36-1-2. Extent of jurisdiction of counties divided by water.

Whenever a stream of water is the boundary of a county, the jurisdiction of the county shall extend to the center of the main channel of the stream, provided that whenever a stream of water is the boundary of a county and such stream or a bank thereof is the boundary of the State of Georgia, the jurisdiction of the county shall extend to that point which is the boundary of the state. (Orig. Code 1863, § 39; Code 1868, § 37; Code 1873, § 35; Code 1882, § 35; Civil Code 1895, § 30; Civil Code 1910, § 32; Code 1933, § 23-102; Ga. L. 1984, p. 131, § 1.)

Cross references. — Boundaries of counties generally, Ch. 3 of this title. Respective rights of owners of property divided by nonnavigable stream, § 44-8-2. Boundaries of state generally, T. 50, C. 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 26.

C.J.S. — 20 C.J.S., Counties, §§ 22, 23.

36-1-3. County a body corporate; power to sue and be sued generally.

Every county is a body corporate, with power to sue or be sued in any court. (Orig. Code 1863, § 463; Code 1868, § 525; Code 1873, § 491; Code 1882, § 491; Civil Code 1895, § 340; Civil Code 1910, § 383; Code 1933, § 23-1501.)

Law reviews. — For article, "Quasi-Municipal Tort Liability in Georgia," see 6 Mercer L. Rev. 287 (1955). For article, "Actions for Wrongful Death in Georgia: Part Three and Four," see 21 Ga. B.J. 339 (1959).

For note discussing governmental immunity from tort liability in Georgia, see 5 Ga. St. B.J. 494 (1969).

JUDICIAL DECISIONS

Analysis

General Consideration
Liability of Counties
Procedure

General Consideration

Extent of power conferred. — County, it is true, is a corporation. But this is only for certain specific purposes. Counties are, in fact, but quasi corporations, and this section of the Code is not to be understood as conferring any powers, except the right to sue and be sued, since the other powers are all conferred and regulated by other statutes and provisions of the Code. Millwood v. DeKalb County, 106 Ga. 743, 32 S.E. 577 (1899) (see O.C.G.A. § 36-1-3).

County is a body corporate and may sue and be sued, but the county's functions are government, and it has no power except as conferred by statute. Town of Decatur v. DeKalb County, 130 Ga. 483, 61 S.E. 23 (1908).

This section subjects the counties of this state to suit, but not to suits upon all causes of action. It does not make them generally liable to suits like individuals or as municipal corporations. Being political subdivisions of the state, they cannot be sued unless made subject to suit expressly or by necessary implication. Decatur County v. Praytor, Howton & Wood Contracting Co., 163 Ga. 929, 137 S.E. 247 (1927) (see O.C.G.A. § 36-1-3).

Who may sue. — Right to sue a county is not restricted to citizens of this state. Board of Comm'rs v. Hurd, 49 Ga. 462 (1873).

Construction with Code Section 36-1-4. — Former Code 1910, §§ 383 and 384 (see O.C.G.A. §§ 36-1-3, 36-1-4) must be construed together, and those statutes must receive a reasonable construction. Decatur County v. Praytor, Howton & Wood Contracting Co., 163 Ga. 929, 137 S.E. 247 (1927).

County's violation of constitutional right raises cause of action. — Violation by a county of a constitutional right of the citizen must, by necessary implication, raise a cause of action in favor of the citizen against the county, unless some means of redress other than suit has been afforded by the legislature. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285 (1935).

Judicial notice. — Courts will take judicial cognizance of the fact that each county is a body corporate. Taylor v. State, 123 Ga. 133, 51 S.E. 326 (1905).

Power to employ counsel. — County commissioners are authorized by clear implication to employ counsel for the county. Templeman v. Jeffries, 172 Ga. 895, 159 S.E. 248 (1931).

Action by county for enforcement not authorized. — County did not have authority to pursue tort damages based on the county's complaint alleging that unlawful acts by the defendants, including "occupation of buildings without obtaining inspections or certificates of occupancy, zoning violations, building code, safety, and fire violations, operation of businesses in a residential zone, and the like," caused the county to spend money enforcing the county's laws and protecting the county's citizens. Torres v. Putnam County, 246 Ga. App. 544, 541 S.E.2d 133 (2000).

Tort claims by county not authorized. — When a county had recovered, identified, and properly disposed of bodies found at a crematorium, O.C.G.A. § 36-1-3 did not authorize the county to recover the county's costs of doing so as compensatory damages in a tort action against the crematorium, funeral homes, and funeral directors alleging negligence and public nuisance claims. Walker County v. Tri-State Crematory, 284 Ga. App. 34, 643 S.E.2d 324 (2007).

Relation between the county and the county attorney does not rest upon contract, but arises from appointment authorized by a legislative enactment. Templeman v. Jeffries, 172 Ga. 895, 159 S.E. 248 (1931).

Cited in City of Dawson v. Terrell County, 38 Ga. App. 676, 145 S.E. 465

General Consideration (Cont'd)

(1928); State Hwy. Bd. v. Hall, 193 Ga. 717, 20 S.E.2d 21 (1942); Ayers v. Franklin County, 73 Ga. App. 207, 36 S.E.2d 110 (1945); State Hwy. Dep't v. Parker, 75 Ga. App. 237, 43 S.E.2d 172 (1947); Norris v. Nixon, 78 Ga. App. 769, 52 S.E.2d 529 (1949); Arnold v. Walton, 205 Ga. 606, 54 S.E.2d 424 (1949); Stelling v. Richmond County, 81 Ga. App. 571, 59 S.E.2d 414 (1950); Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953); Seaboard Air Line R.R. v. County of Crisp, 280 F.2d 873 (5th Cir. 1960); Lowndes County v. Dasher, 229 Ga. 289, 191 S.E.2d 82 (1972); Bibb County v. McDaniel, 127 Ga. App. 129, 192 S.E.2d 544 (1972); Mirce v. United States, 526 F.2d 679 (5th Cir. 1976); Georgia Insurers Insolvency Pool v. Elbert County, 258 Ga. 317, 368 S.E.2d 500 (1988); Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003).

Liability of Counties

No right given to sue for any breach of duty. — This section does not ex vi termini give a citizen a right to sue the county for the nonperformance of any duty. A county rests upon a different footing from cities and towns. Scales v. Ordinary of Chattahoochee County, 41 Ga. 225 (1870) (see O.C.G.A. § 36-1-3).

Liability based on statute or breach of valid contract. — County can always be sued upon any liability against the county created by statute, or for breach of any valid contract which the county is authorized by law to make. Decatur County v. Praytor, Howton & Wood Contracting Co., 163 Ga. 929, 137 S.E. 247 (1927).

Supreme Court has long construed former Code 1933, §§ 23-1501 and 23-1502 (see O.C.G.A. §§ 36-1-3 and 36-1-4) as permitting suits against counties based on contracts made pursuant to legislative authorization. PMS Constr. Co. v. DeKalb County, 243 Ga. 870, 257 S.E.2d 285 (1979).

County not liable without constitutional or statutory cause of action. — Constitutional provision that a county is a body corporate and this section do not authorize a suit against a county for damages when the county is not made liable for such damages by the Constitution or by statute. Revels v. Tift County, 235 Ga. 333, 219 S.E.2d 445 (1975) (see O.C.G.A. § 36-1-3).

Counties, as corporations, are mere subdivisions of the state, and the state is never subject to suit except by express enactment, and this is also true of subdivisions of the state. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285 (1935).

County, being a political division of the state, is not liable to be sued, unless special authority can be shown; it is incumbent upon the person filing the suit to bring a case within the legislative authority upon which the person relies to bring the suit. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285 (1935).

Whenever a county is by statute made liable for a given demand, an action against the county will lie therefor, though the statute does not in express terms authorize or provide for the bringing of such an action. Taylor v. Jenkins County, 116 Ga. App. 718, 158 S.E.2d 322 (1967).

County not liable for tort of guard. — County is not responsible in damages for the tort of a guard in unlawfully beating a convict in the chain gang, or for the negligence of other guards in not protecting the convict from the unlawful beating. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285 (1935).

Procedure

Injunction available against governing officials. — Though suits by and against a county are properly brought in the name of the county, an injunction may be sought in a court of equity in an action which is brought against the governing officials of the county. Olley Valley Estates, Inc. v. Fussell, 232 Ga. 779, 208 S.E.2d 801 (1974).

All suits by, or against, a county shall be in the name thereof. Commissioners of Rds. & Revenue v. Howard, 59 Ga. App. 451, 1 S.E.2d 222 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 2, 8, 735, 740.

C.J.S. — 20 C.J.S., Counties, §§ 1 et seq., 410 et seq.

ALR. — County as subject to garnishment process, 60 ALR 823.

Power of city, town, or county or its officials to compromise claim, 105 ALR 170; 15 ALR2d 1359.

Right of governmental entity to maintain action for defamation, 45 ALR3d 1315.

36-1-4. When county liable to be sued.

A county is not liable to suit for any cause of action unless made so by statute. (Civil Code 1895, § 341; Civil Code 1910, § 384; Code 1933, § 23-1502.)

History of Code section. — This section is derived in part from the decisions in Hammond v. County of Richmond, 72 Ga. 188 (1883), and Smith v. Wilkes & McDuffie Counties, 79 Ga. 125, 4 S.E. 20 (1887).

Law reviews. — For article, "Quasi-Municipal Tort Liability in Georgia," see 6 Mercer L. Rev. 287 (1955). For article, "Actions for Wrongful Death in Georgia: Parts Three and Four," see 21 Ga. B.J. 339 (1959). For article discussing necessity of liability insurance for Georgia counties and municipalities, and constitutional authority of the units to provide such insurance, see 25 Ga. B.J. 35 (1962). For article surveying Tort Liability Insurance in Georgia Local Government Law, see 24 Mercer L. Rev. 651 (1973). For article on insurance and indemnity for Georgia local government officers under Georgia law, see 13 Ga. L. Rev. 747 (1979). For survey article on local government law, see 34 Mercer L. Rev. 225 (1982). For article, "Defending the Lawsuit: A First-Round Checklist," see 22 Ga. St. B.J. 24 (1985). For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For article, "Georgia Local Government Tort Liability: the 'Crisis' Conundrum," see 2 Ga. St. U. L. Rev. 19 (1986). For article, "Georgia County Liability: Nuisance or Not?," see 43 Mercer L. Rev. 1 (1991). For article, "Local Government Tort Liability: the Summer of '92," see 9 Ga. St. U. L. Rev. 405 (1993).

For note discussing governmental immunity from tort liability in Georgia, see 5 Ga. St. B.J. 494 (1969). For note analyzing sovereign immunity in this state and proposing implementation of a waiver scheme and creation of a court of claims pursuant to Ga. Const. 1976, Art. VI, Sec. V, Para. I, see 27 Emory L.J. 717 (1978).

JUDICIAL DECISIONS

Analysis

General Consideration
Violations of Constitutional Rights
Taking of or Damage to Private Property
Contracts
Torts
1. Liability Generally
2. Roads and Bridges
Pleading

General Consideration

Editor's notes. — In light of the similarity of the provisions, decisions under former Code 1910, § 543 and former Code 1933, § 95-1001, are included in the annotations for this Code section.

Constitutionality. — This section does not violate the state and federal Constitutions. Revels v. Tift County, 235 Ga. 333, 219 S.E.2d 445 (1975) (see O.C.G.A. § 36-1-4).

This section does not violate U.S. Const., amend. 14 or Ga. Const. 1976, Art. I, Sec. I, Para. I (see Ga. Const. 1983, Art. I, Sec. I, Para. I). Williams v. Georgia Power Co., 233 Ga. 517, 212 S.E.2d 348 (1975).

Codification of case law rule. — This section is a codification of the principal rule in Hammond v. County of Richmond, 72 Ga. 188 (1883), and Smith v. Wilkes & McDuffie Counties, 79 Ga. 125, 4 S.E. 20 (1887). Lynch v. Harris County, 188 Ga. 651, 4 S.E.2d 573 (1939) (see O.C.G.A. § 36-1-4).

Sovereign immunity still rule. — Supreme Court of this state has so often affirmed and acknowledged that the doctrine of sovereign immunity prevents a suit by a citizen against the state, or a political subdivision thereof, until it is hardly necessary to again formally assert this rule. Haber v. Fulton County, 124 Ga. App. 789, 186 S.E.2d 152 (1971), overruled on other grounds, Cox v. Cox ex rel. State Dep't of Human Resources, 255 Ga. 6, 334 S.E.2d 683 (1985).

Sovereign immunity recognized since common law. — Doctrine of sovereign immunity has been recognized in this state since the adoption of the common law. Hendon v. DeKalb County, 203 Ga. App. 750, 417 S.E.2d 705, cert. denied, 203 Ga. App. 906, 417 S.E.2d 705 (1992).

Immunity statutory, not common law. — Unlike the immunity of the state which had been judicially created, the immunity of a county from suit is found in statutory law. Nelson v. Spalding County, 249 Ga. 334, 290 S.E.2d 915 (1982).

Even if Ga. Const. 1976, Art. VI, Sec. V, Para. I (see Ga. Const. 1983, Art. I, Sec. II, Para. IX) were not meant to reserve immunity for counties in all cases, such immunity has the additional support of this section. Nelson v. Spalding County, 249 Ga. 334, 290 S.E.2d 915 (1982) (see O.C.G.A. § 36-1-4).

Extent of immunity. — Sovereign immunity enjoyed by a county extends to discretionary as well as ministerial functions and, indeed, even to personal injury claims based on nuisance. Early County v. Fincher, 184 Ga. App. 47, 360 S.E.2d 602, cert. denied, 184 Ga. App. 909, 360 S.E.2d 602 (1987).

O.C.G.A. § 36-1-4 includes actions brought under a theory of negligence. Schulze v. DeKalb County, 230 Ga. App. 305, 496 S.E.2d 273 (1998).

General rule for liability. — Whenever a county is by statute made liable for a given demand, an action against the county will lie therefor, though the statute does not in express terms authorize or provide for the bringing of such an action. Decatur County v. Praytor, Howton & Wood Contracting Co., 163 Ga. 929, 137 S.E. 247 (1927).

Neither negligent performance of duties which the county authorities are compelled to perform, nor the negligent discharge of duties voluntarily assumed, except in cases provided by statute, gives a cause of action against the county. Millwood v. DeKalb County, 106 Ga. 743, 32 S.E. 577 (1899); Mitchell County v. Dixon, 20 Ga. App. 21, 92 S.E. 405 (1917).

Language of section broad and comprehensive. — Language could not be broader or more comprehensive, or more free from doubt, than the words of this section. When it says the county shall not be liable for any cause of action, the statute expressly negatives the idea of exceptions other than provided therein, to wit, "unless made so by statute." Wood v. Floyd County, 161 Ga. 743, 131 S.E. 882 (1926) (see O.C.G.A. § 36-1-4).

County exempt from suit generally. — County is exempt from suit except when the suit is specifically authorized by the Constitution and statutes. Bibb County v. Green, 42 Ga. App. 552, 156 S.E. 745 (1931).

This section has the effect of exempting a county from liability to suit in the absence of a statute authorizing a suit for the breach of duty alleged, though that duty is one imposed on the county by

statute. Wolf v. Upson County, 44 F.2d 925 (5th Cir. 1930) (see O.C.G.A. § 36-1-4).

County is not liable to suit for any cause of action unless made so by statute. Hendon v. DeKalb County, 203 Ga. App. 750, 417 S.E.2d 705, cert. denied, 203 Ga. App. 906, 417 S.E.2d 705 (1992).

Counties, as corporations, are mere subdivisions of state, and the state is never suable except by express enactment, and this is also true of subdivisions of the state. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285 (1935).

County, being a political division of the state, is not liable to be sued unless special authority can be shown; it is incumbent upon the person filing the suit to bring a case within the legislative authority upon which the person relies to bring the suit. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285 (1935).

County in virtue of being a subdivision of the sovereign state "is not liable to suit for any cause of action unless made so by statute." For similar reason the State Highway Board (now State Transportation Board) is not so liable unless made so by law. Taylor v. Richmond County, 185 Ga. 610, 196 S.E. 37, answer conformed to, 57 Ga. App. 586, 196 S.E. 303 (1938).

Doctrine of sovereign immunity also applies to political subdivisions of the state, including counties. Hendon v. DeKalb County, 203 Ga. App. 750, 417 S.E.2d 705, cert. denied, 203 Ga. App. 906, 417 S.E.2d 705 (1992).

Rule for county liability different from that of city. — While it is true that the liability of cities on the cities' contracts is determined just as it was at common law and under former Code 1933, § 69-301 (see O.C.G.A. § 36-33-1) and their liability as to torts conforms to the rule at common law, the rule of liability as to counties is different, in that former Code 1933, § 23-1502 (see O.C.G.A. § 36-1-4) relaxes the rule which forbids altogether any suit against a county for any cause of action so as to authorize suits against the city when so authorized by express constitutional or statutory authority. Purser v. Dodge County, 188 Ga. 250, 3 S.E.2d 574, answer conformed to, 60 Ga. App. 316, 3 S.E.2d 744 (1939).

Express authorization of liability not necessary. — Whenever a county is by statute made liable for a given demand, an action against the county will lie therefor, though the statute does not in express terms authorize or provide for the bringing of such an action. Taylor v. Jenkins County, 116 Ga. App. 718, 158 S.E.2d 322 (1967).

Waiver of immunity. — Immunity provided to a county by O.C.G.A. § 36-1-4 is waived, pursuant to Ga. Const., 1983, Art. I, Sec. VI, Para. IX, when the county purchases a liability insurance policy. Early County v. Fincher, 184 Ga. App. 47, 360 S.E.2d 602, cert. denied, 184 Ga. App. 909, 360 S.E.2d 602 (1987).

No constitutional or statutory authority for recovery of punitive damages. — Since damages recoverable in an action by a property owner whose property is harmed by a county for public purposes is a substitute for damages recoverable in a condemnation action, there is no constitutional or statutory authority for the recovery of punitive damages against a county. Fulton County v. Baranan, 240 Ga. 837, 242 S.E.2d 617 (1978).

Without express authority by statute, county is not subject to garnishment. Dotterer v. Bowe, 84 Ga. 769, 11 S.E. 896 (1890).

When county officials exceed powers. — When public officers, in discharging duties imposed upon the officers by law, undertake other duties not imposed by law, although intending it to be a benefit to the public, the latter, as represented by county governments, cannot be made responsible for torts or ultra vires contracts. Wood v. Floyd County, 161 Ga. 743, 131 S.E. 882 (1926).

Acts done within scope of authority and without wilfulness, fraud, or malice. — Under sovereign immunity principles, a public officer or employee, acting within the scope of their authority and engaged in discretionary as opposed to ministerial functions, is entitled to immunity from suit provided the acts complained of are done within the scope of the officer's authority and without wilfulness, fraud, malice, or corruption. Hendon v. DeKalb County, 203 Ga. App. 750, 417 S.E.2d 705, cert. denied, 203 Ga. App. 906, 417 S.E.2d 705 (1992).

General Consideration (Cont'd)

Board of education liable for acts outside board's authority. — County is a public corporation and acts through the county's officers and agents. In matters pertaining to education, the county acts through the county's board of education. When the board of education acts upon matters lawfully within the board's jurisdiction, the board is the county acting through the board's corporate authority, and a county is not liable to suit for any cause of action unless made so by statute. But when the board of education, through the board's members, acts beyond the scope of the board's lawful jurisdiction and commits an actionable wrong, the act so committed is not "county action," and in such a case a suit may be maintained in the courts of this state against the wrongdoers. Duffee v. Jones, 208 Ga. 639, 68 S.E.2d 699 (1952).

Charter provision constitutional. — A 1983 amendment to the charter of the consolidated local government of Columbus which provided that the tort liability of the consolidated government would be the tort liability applicable to counties was valid and constitutional. Bowen v. City of Columbus, 256 Ga. 462, 349 S.E.2d 740 (1986).

County is liable to suit in action to recover land owned by the plaintiffs and which has been taken possession of by the county, when the plaintiff refuses on demand to deliver possession. Lynch v. Harris County, 188 Ga. 651, 4 S.E.2d 573 (1939).

"Equitable liens." — O.C.G.A. § 36-1-4 was not an impediment to an unpaid subcontractor's "equitable lien" claim against a county as to any funds which were being held by the county but which belonged to the general contractor. DeKalb County v. J & A Pipeline Co., 263 Ga. 645, 437 S.E.2d 327 (1993).

County liable for money illegally received. — If a county illegally obtains the money of another and refuses, on demand, to make restitution, an action for money had and received lies against the county for money so appropriated and used. Owens v. Floyd County, 94 Ga. App. 532, 95 S.E.2d 389 (1956).

Suit for money had and received, when the suit is against equity and good conscience for the one receiving it to keep it (and this includes a county), is not based on a contract nor a statute. Owens v. Floyd County, 94 Ga. App. 532, 95 S.E.2d 389 (1956).

Requirement for writ of mandamus. — Before a writ of mandamus will issue to compel the county commissioners to issue a warrant upon the treasurer to pay a debt, it must appear that the debt comes within the classes provided in the Constitution for which a tax may be levied. Daniel v. Hutchinson, 169 Ga. 492, 150 S.E. 681 (1929).

When landowners were compensated by a county in condemnation proceedings, the landowners could not seek additional recovery based upon nuisance or trespass, nor could the landowners bring suit against the county for negligent misrepresentation or fraudulent inducement in the original condemnation actions. Butler v. Gwinnett County, 223 Ga. App. 703, 479 S.E.2d 11 (1996).

Cited in City of Dawson v. Terrell County, 33 Ga. App. 676, 145 S.E. 465 (1928); Decatur County v. Townsend, 46 Ga. App. 103, 166 S.E. 774 (1932); Morris v. Floyd County, 46 Ga. App. 150, 167 S.E. 127 (1932); Warren County v. Battle, 48 Ga. App. 240, 172 S.E. 673 (1934); Wasden v. Jefferson County, 56 Ga. App. 505, 193 S.E. 116 (1937); Ayers v. Hartford Accident & Indem. Co., 106 F.2d 958 (5th Cir. 1939); State Hwy. Bd. v. Hall, 193 Ga. 717, 20 S.E.2d 21 (1942); Ayers v. Franklin County, 73 Ga. App. 207, 36 S.E.2d 110 (1945); Johnson County v. Hicks, 73 Ga. App. 238, 36 S.E.2d 116 (1945); State Hwy. Dep't v. Parker, 75 Ga. App. 237, 43 S.E.2d 172 (1947); Arnold v. Walton, 205 Ga. 606, 54 S.E.2d 424 (1949); Brantley v. Baldwin County, 81 Ga. App. 485, 59 S.E.2d 288 (1950); Almon v. Terrell County, 89 Ga. App. 403, 79 S.E.2d 430 (1953); State Hwy. Dep't v. McClain, 216 Ga. 1, 114 S.E.2d 125 (1960); Richmond County v. Williams, 109 Ga. App. 670, 137 S.E.2d 343 (1964); Lowndes County v. Dasher, 229 Ga. 289, 191 S.E.2d 82 (1972); Hancock County v. Williams, 230 Ga. 723, 198 S.E.2d 659 (1973); Lee v. Petty, 133 Ga. App. 201, 210 S.E.2d 383 (1974); Rich-

mond County v. Jackson, 234 Ga. 717, 218 S.E.2d 11 (1975); Wayne County Bd. of Comm'rs v. Warren, 236 Ga. 150, 223 S.E.2d 133 (1976); Central of Ga. R.R. v. Schnadig Corp., 139 Ga. App. 193, 228 S.E.2d 165 (1976); Lasky v. Fulton County, 145 Ga. App. 120, 243 S.E.2d 330 (1978); DeKalb County v. Gibson, 146 Ga. App. 573, 246 S.E.2d 692 (1978); Duffield v. DeKalb County, 242 Ga. 432, 249 S.E.2d 235 (1978); Reid v. Gwinnett County, 242 Ga. 88, 249 S.E.2d 559 (1978); DeKalb County v. Scruggs, 147 Ga. App. 711, 250 S.E.2d 159 (1978); Overlin v. Boyd, 598 F.2d 423 (5th Cir. 1979); Miree v. United States, 490 F. Supp. 768 (N.D. Ga. 1980); Grant v. Barge, 160 Ga. App. 488, 287 S.E.2d 393 (1981); Baranan v. Fulton County, 250 Ga. 531, 299 S.E.2d 722 (1983); James v. Richmond County Health Dep't, 168 Ga. App. 416, 309 S.E.2d 411 (1983); Bliss v. Cobb County, 599 F. Supp. 233 (N.D. Ga. 1984); Shuman v. Dyess, 175 Ga. App. 213, 333 S.E.2d 379 (1985); Dinsmore v. Cherokee County, 177 Ga. App. 93, 338 S.E.2d 523 (1985); Ostuni Bros. v. Fulton County Dep't of Pub. Works, 184 Ga. App. 406, 361 S.E.2d 668 (1987); Marion v. DeKalb County, 821 F. Supp. 685 (N.D. Ga. 1993); Atlanta Mechanical, Inc. v. DeKalb County, 209 Ga. App. 307, 434 S.E.2d 494 (1993); DeKalb County v. J & A Pipeline Co., 263 Ga. 645, 437 S.E.2d 327 (1993); ABE Eng'g, Inc. v. Fulton County Bd. of Educ., 214 Ga. App. 514, 448 S.E.2d 221 (1994); Thompson v. Chapel, 229 Ga. App. 537, 494 S.E.2d 216 (1997).

Violations of Constitutional Rights

Violation by county of constitutional right of citizen raises cause of action in favor of the citizen against the county, unless some means of redress other than suit has been afforded by the legislature. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285 (1935); Waters v. DeKalb County, 208 Ga. 741, 69 S.E.2d 274 (1952); Baranan v. Fulton County, 232 Ga. 852, 209 S.E.2d 188 (1974).

Arrestee's 42 U.S.C. § 1983 suit against a county, alleging that the arrestee was raped by a deputy at the county jail, failed as a matter of law because, under O.C.G.A. § 36-1-4, a county was not liable for any cause of action unless provided by statute, and the county had not waived the county's sovereign immunity. Boyd v. Nichols, 616 F. Supp. 2d 1331 (M.D. Ga. 2009).

Taking of or Damage to Private Property

Right arises from Constitution. — Right to sue a county for damages for the taking or damaging of private property under the circumstances alleged is not dependent on any statute, but arises out of the constitutional provision which applies to counties as well as to individuals. Brooks County v. Elwell, 63 Ga. App. 308, 11 S.E.2d 82 (1940).

Declaration of the Constitution that private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid gives rise to an action for damages against a county for injuries to private property caused by public improvements. Baranan v. Fulton County, 232 Ga. 852, 209 S.E.2d 188 (1974).

Lawsuits involving taking or damaging of property under Ga. Const. 1976, Art. I, Sec. III, Para. I (see Ga. Const. 1983, Art. I. Sec. III, Para. II, and Art. III, Sec. VI, Para. II) may be maintained against counties. Ingram v. Baldwin County, 149 Ga. App. 422, 254 S.E.2d 429 (1979).

Taking private property. — As a general rule, a county is not liable to suit unless there is a law which so declares. Yet the appropriate law can be found in the Constitution. When private property is taken by county authorities for the benefit of the public, a right of action arises in favor of the owner of the property. Elbert County v. Brown, 16 Ga. App. 834, 86 S.E. 651 (1915); Bates v. Madison County, 32 Ga. App. 370, 123 S.E. 158 (1924).

County can be held liable to the extent of an injury to property, not on the theory that the county is liable, as are other tort-feasors, for the negligent acts and conduct of its agents while acting within the scope of their authority, but for the reason that it cannot, either with or without the guise of contractual authority, damage the property of another for the public use without just and adequate com-

Taking of or Damage to Private Property (Cont'd)

pensation being paid. Felton Farm Co. v. Macon County, 49 Ga. App. 239, 175 S.E. 29 (1934).

Construing together Ga. Const. 1976, Art. I, Sec. III, Para. I (see Ga. Const. 1983, Art. I, Sec. III, Para. II, and Art. III, Sec. VI, Para. II) and this section, a right of action is afforded against a county for damage to private property for public uses or taking private property for public uses. Consequently, a county is liable to suit at the instance of an individual for damages to the individual's property done by the county for a public purpose. Taylor v. Richmond County, 185 Ga. 610, 196 S.E. 37, answer conformed to, 57 Ga. App. 586, 196 S.E. 303 (1938) (decided under former Code 1933, § 95-1001).

Owner entitled to compensation. — If private property is taken or damaged by a county for public use, even by the prudent and proper exercise of a power conferred by statute, the owner is entitled to just compensation. Felton Farm Co. v. Macon County, 49 Ga. App. 239, 175 S.E. 29 (1934).

When a county causes a nuisance to exist which amounts to a taking of property of one of its citizens for public purposes, the county is liable. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573 (1978).

Recovery of prejudgment interest. — Sovereign immunity does not prohibit the recovery of prejudgment interest in an action for a refund of wrongfully collected taxes. Eastern Air Lines v. Fulton County, 183 Ga. App. 891, 360 S.E.2d 425, cert. denied, 183 Ga. App. 906, 360 S.E.2d 425 (1988).

Diversion of surface water. — Counties are subject to suit for damages, as well as injunctive relief, in the maintenance of an activity so as to constitute a continuing nuisance by diverting surface water onto a property owner's property, and which is violative of a citizen's constitutional right that private property shall not be taken or damaged for public purposes without just and adequate compensation being paid. Anderson v. Columbus, 152 Ga. App. 772, 264 S.E.2d 251 (1979).

Operation and maintenance of public works project. — As long as a county operates and maintains a public works project so as not to result in the creation of a nuisance, O.C.G.A. § 36-1-4 renders the county immune from suit for damage resulting from the operation and maintenance of the project. Desprint Servs., Inc. v. DeKalb County, 188 Ga. App. 218, 372 S.E.2d 488 (1988).

As a matter of law, the post-construction non-nuisance damage done to private property by a single malfunction in the operation of a public works project is not damage which has been done for a "public purpose" within the meaning of Ga. Const. 1976, Art. I, Sec. III, Para. I (see Ga. Const. 1983, Art. I, Sec. III, Para. II, and Art. III, Sec. VI, Para. II). Desprint Servs., Inc. v. DeKalb County, 188 Ga. App. 218, 372 S.E.2d 488 (1988).

Private property which was flooded as the result of a burst water main, which had been equipped with a new "butterfly" valve in connection with a road construction project undertaken a few weeks earlier by a county was not damaged for the "public purpose" of actually constructing any public works project within the meaning of Ga. Const. 1976, Art. I, Sec. III, Para. I (see Ga. Const. 1983, Art. I, Sec. III, Para. II, and Art. III, Sec. VI, Para. II). Desprint Servs., Inc. v. DeKalb County, 188 Ga. App. 218, 372 S.E.2d 488 (1988).

While the power to construct sewer and drainage systems is a governmental function, the county cannot create and maintain such system as a nuisance which damages private property without subjecting itself to civil liability. Ingram v. Baldwin County, 149 Ga. App. 422, 254 S.E.2d 429 (1979).

Single instance of backup of county sewage system into private home would not be sufficient to create nuisance for which county liability would attach. Ingram v. Baldwin County, 149 Ga. App. 422, 254 S.E.2d 429 (1979).

Damage through construction of bridge. — Right of action exists against county for damaging private property for public uses in constructing the approaches to county bridge. Smith v. Floyd County, 85 Ga. 420, 11 S.E. 850 (1890).

No liability unless "taking". — When nuisance created by county does not

amount to taking for public purposes county is not liable. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573 (1978).

Theory not applicable to negligence. — County is not liable to a father of a minor child injured by the negligence of one of the servants of the county in operating a truck, for loss of the services of the child, on the theory that the deprivation of the father of the services is the taking or damaging of property for public use without just compensation, nor would it make any difference that the driver of the truck was employed in repairing a public road. Born v. Fulton County, 51 Ga. App. 537, 181 S.E. 106 (1935).

Action to recover for nuisance after 12 months against legal policy. — Policy of the law is explicit that all claims against a county for taking or damaging private property for public uses must be filed within 12 months, and suit thereon for the depreciation in the market value must be instituted within the period of limitations stipulated by the law, and it is not the policy of the law to permit the bringing of suits against counties from time to time for damages which might result by reason of negligently constructed public improvements constituting a nuisance. Bibb County v. Green, 42 Ga. App. 552, 156 S.E. 745 (1931).

Damages are actual depreciation in market value of premises. — Right of action exists against a county for damaging private property for public uses; the liability of counties for damages to property in all cases being the actual depreciation in the market value of the premises injured. Felton Farm Co. v. Macon County, 49 Ga. App. 239, 175 S.E. 29 (1934).

Sovereign immunity. — In an action in which the plaintiff landowners filed suit against the defendant county alleging trespass, negligence, negligence per se, and violation of the landowners' riparian rights, in connection with the county's recreational development of the county's adjoining property, the county was entitled to sovereign immunity because there was no showing by the landowners that the county waived sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX and O.C.G.A. § 36-1-4. Carney v. Gordon County, No. 4:06-CV-36-RLV, 2006 U.S. Dist. LEXIS 82634 (N.D. Ga. Sept. 12, 2006).

Contracts

Liability for breach of contract. — Whenever counties are authorized to contract, and counties make valid contracts in pursuance of such power, the counties are liable to suits for breaches thereof, although there is no statute expressly authorizing the bringing of such an action for such purpose. Washington County v. Sheppard, 46 Ga. App. 240, 167 S.E. 339 (1933).

Exception to general rules exists when a county breaches a contract the county was authorized by law to undertake. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414 (1966).

County can always be sued upon any liability against the county created by statute, or for breach of any valid contract which the county is authorized by law to make. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414 (1966).

Whenever a county is made liable by statute for a demand, or is authorized by statute to contract, and in pursuance of such power does contract, then an action will lie against the county to enforce such liability, or to enforce any rights growing out of such contract, although there is no statute expressly authorizing the bringing of an action for such purpose. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414 (1966).

If a statute authorizes a county to contract, the statute also implicitly creates a cause of action for breach. Miree v. United States, 526 F.2d 679 (5th Cir.), different result reached on rehearing, 538 F.2d 643 (5th Cir. 1976), judgment en banc vacated, 433 U.S. 25, 97 S. Ct. 2490, 53 L. Ed. 2d 557 (1977).

Supreme Court has long construed former Code 1933, §§ 23-1501 and 23-1502 (see O.C.G.A. §§ 36-1-3 and 36-1-4) as permitting suits against counties based on contracts made pursuant to legislative authorization. PMS Constr. Co. v. DeKalb County, 243 Ga. 870, 257 S.E.2d 285 (1979).

Liability on employment contract. — Employee who has obtained permanent

Torts (Cont'd)
1. Liability Generally (Cont'd)

pleadings based on sovereign immunity as the worker sufficiently alleged that the machine was a vehicle as contemplated by O.C.G.A. § 33-24-51, which established a waiver of sovereign immunity if the county had purchased liability insurance to cover damages and injuries arising from the use of motor vehicles under the county's management. Hewell v. Walton County, 292 Ga. App. 510, 664 S.E.2d 875 (2008).

Purchase of insurance is no waiver of liability. — Procurement of insurance under Ga. L. 1960, p. 289, § 1 (see O.C.G.A. § 33-24-51) does not constitute a waiver of sovereign immunity in regard to damages caused by the county's negligence not connected with motor vehicles. Revels v. Tift County, 235 Ga. 333, 219 S.E.2d 445 (1975).

Compensation of some other person or persons for comparable injuries on the same county property, or the purchase of insurance for such purposes, does not create a cause of action in a plaintiff suing a city in a tort action. The defendant city would not be estopped by such unauthorized waiver of the sovereign immunity of the county. Revels v. Tift County, 235 Ga. 333, 219 S.E.2d 445 (1975).

County does not waive the county's immunity in the purchase of a contract of liability insurance, even though the policy of insurance may include a clause allegedly waiving immunity. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573 (1978).

Sovereign immunity barred the claimants' personal injury and nuisance claims against the members of a county board of commissioners in the commissioners' official capacities because the claimants did not show that the county waived the county's sovereign immunity with regard to the county's operation of a mosquito control helicopter which sprayed one of the claimants with chemicals. Further, the county did not waive the county's sovereign immunity under O.C.G.A. § 33-24-51 by purchasing a liability insurance policy covering the helicopter because the helicopter was not a "motor vehicle" as that term was understood in the statute. Bd. of Comm'rs v. Johnson, 311 Ga. App. 867, 717 S.E.2d 272 (2011).

Waiver of sovereign immunity for motor vehicle insurance. — In determining if a county waived the county's sovereign immunity through the voluntary purchase of liability insurance under the second sentence of O.C.G.A. § 33-24-51(b), a trial court erred in considering the definition of "motor vehicle" provided in O.C.G.A. § 36-92-1; rather, "any motor vehicle" was defined as a vehicle that was capable of being driven on the public roads that was covered by a liability insurance policy purchased by the county. Glass v. Gates, 311 Ga. App. 563, 716 S.E.2d 611 (2011).

2. Roads and Bridges

No liability for defect in highway. — There is no constitutional or statutory provision which can be taken to render a county liable for a tort on account of personal injuries arising from a defect in a highway constructed or repaired by the county. This is true irrespective of whether the construction or repair of the highway is done in the performance of the county's own governmental functions in maintaining the county's system of highways, or whether the construction or repair is done under a contract made by the county with the State Highway Department (now Department of Transportation) solely for pecuniary gain. Purser v. Dodge County, 188 Ga. 250, 3 S.E.2d 574, answer conformed to, 60 Ga. App. 316, 3 S.E.2d 744 (1939).

There being no liability provided by any statute against a county for negligence arising out of the county's maintenance or construction of a public road, a county, notwithstanding the county may in the construction of a public road be operating under a contract from which the county derives a pecuniary gain made with the highway department pursuant to law, is not liable for the county's negligence in obstructing the roadway by leaving a pile of rock or gravel in the road in preparation for the construction by the county of a bridge, and as a result of which a person traveling along the road in an automobile runs into the pile of rock and is injured.

Purser v. Dodge County, 60 Ga. App. 316, 3 S.E.2d 744 (1939).

There is no constitutional or statutory provision which can be taken to render a county liable for a tort on account of personal injuries arising from a defect in a highway constructed or repaired by the county. Williams v. Georgia Power Co., 233 Ga. 517, 212 S.E.2d 348 (1975).

No recovery for poisoning cows. — This provision does not give a cause of action when a county by road work pollutes a stream and thereby plaintiff's cows are poisoned. Howard v. County of Bibb, 127 Ga. 291, 56 S.E. 418 (1907).

County not liable for drowning of car occupants in river ford. — County was under no duty to build bridge across creek which under normal circumstances was safe to ford and therefore not liable for death of car occupants who drowned when creek flooded over ford as car passed over the ford. Dollar v. Haralson County, 704 F.2d 1540 (11th Cir.), cert. denied, 464 U.S. 963, 104 S. Ct. 399, 78 L. Ed. 2d 341 (1983).

Express statutory authority exists for defective bridges. — While a county is not liable to suit unless made so by statute, it has been provided by statute that a county is primarily liable for all injuries caused by reason of any defective bridges, whether erected by contractors or county authorities. Berrien County v. Vickers, 73 Ga. App. 863, 38 S.E.2d 619 (1946) (decided under former Code 1933, § 95-1001).

Liability in case of bridges. — When the statute provides for the liability of counties, a recovery may be had against the counties as when no sufficient bond is taken to keep bridges in repair. Hammond v. County of Richmond, 72 Ga. 188 (1883).

County is liable to suit by contractors for breach of a valid and binding contract for the building of a bridge over a river in such county, upon the assumption that the difference between the representations in the plans and specifications as to the facts and conditions under the bed of the river, and the actual facts and conditions thereof, amounted to a breach of the contract by the county. Decatur County v. Praytor, Howton & Wood Contracting Co., 163 Ga. 929, 137 S.E. 247 (1927).

Suit may be maintained against a county and a verdict and judgment obtained against the county for damages resulting from a defect in a bridge, although it may appear that jurisdiction over the highway on which the bridge was located had been assumed by the State Highway Department (now Department of Transportation) under the terms of the law, and that the State Highway Department and not the county was guilty of negligence in the maintenance and construction of the bridge or its approaches which caused the injury. Berrien County v. Vickers, 73 Ga. App. 863, 38 S.E.2d 619 (1946) (decided under former Code 1933, § 95-1001).

For a county to be liable for injuries resulting from defective bridge repairs there must have been a failure to take a bond from a contractor when such a bond was required, and the injury complained of must have occurred within the time which would have been covered by the contractor's bond, if such a bond had been given. Wolf v. Upson County, 44 F.2d 925 (5th Cir. 1930).

Pleading

Petition must show liability by statute. Seymore v. Elbert County, 116 Ga. 371, 42 S.E. 727 (1902); Fulton County v. Gordon Water Co., 37 Ga. App. 290, 140 S.E. 45 (1927), cert. denied, 37 Ga. App. 833 (1928); Newberry v. Hall County, 52 Ga. App. 472, 183 S.E. 664 (1936); Anderson v. DeKalb County, 107 Ga. App. 328, 130 S.E.2d 140 (1963).

Petition sufficient when petition shows right to recover under statute. — Petition sufficiently shows the suit is brought under a particular statute when the facts alleged clearly show the plaintiff's right to recovery under the provisions of the statute. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414 (1966).

Petition sufficient which alleges employment under county law. — When a petition alleges the plaintiff was employed and obtained a permanent status under the law and the regulations promulgated by the county commissioners, then the county is subject to suit. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414 (1966).

Pleading (Cont'd)

Liability may arise from performance of statutorily authorized act. — Liability to suit may be shown by indicating that the claim arises as an incident in the performance of an undertaking by the county authorized by statute. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414 (1966).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Consideration
Liability of Boards of Education

General Consideration

Generally, counties have broader immunity from suits than municipalities. 1975 Op. Att'y Gen. No. 75-32.

No liability for acts of probationer. — County's potential liability for acts of a probationer working on a community service project depends upon the existence of a statute authorizing a tort action against the county. 1975 Op. Att'y Gen. No. 75-32.

No liability for collision with roadside object. — Generally, a county will not be subject to liability for damages resulting from a motorist's collision with a garbage container placed by the county beside the county's road. 1974 Op. Att'y Gen. No. U74-66.

Liability for misfeasance. — Slash Pine Area Planning and Development Commission is not liable for damage to private individuals resulting from improper performance or nonperformance of duties of the Commission's officers, agents, or servants. 1967 Op. Att'y Gen. No. 67-255.

Liability of Boards of Education

No tort liability generally. — Local school district is not liable in tort under the law of Georgia for injuries sustained by a pupil engaged in school athletic activities. 1957 Op. Att'y Gen. p. 100.

Neither a county board of education nor the board's members, by virtue of their membership, are liable for injuries incurred by a pupil riding on one of the board's school buses. 1965-66 Op. Att'y Gen. No. 65-84.

Board of education liable if acting beyond scope of authority. — When the board of education acts upon matters lawfully within the board's jurisdiction, it is the county acting through the county's corporate authority, and the county is not liable to suit for any cause of action unless made so by statute; but when the board of education, through the board's members, acts beyond the scope of the board's lawful jurisdiction and commits an actionable wrong, the act so committed is not "county action," and in such a case a suit may be maintained in the courts of this state against the wrongdoers. 1958-59 Op. Att'y Gen. p. 98.

County board of education, acting beyond the scope of the board's lawful jurisdiction in leasing school buildings to private citizens to be used as a recreational center, might thereby subject the board's members to individual liability to suit in case someone was hurt or an accident happened on this property. 1958-59 Op. Att'y Gen. p. 98.

No shield from liability for individual negligence. — This shield from liability, which is generally referred to as the doctrine of "sovereign immunity" is applicable only if the act or conduct causing the loss is one which was taken by the board within the scope of the board's authority or official discretion; it does not protect a board member when it is such member's own personal and individual negligence which causes the injury rather than an action of the school board; another exception is the fact that while the doctrine protects the school board and the members of the board from liability when the injury results from ordinary negligence of the board, it would not apply when the action of the board amounts to malicious, willful, or wanton misconduct. 1965-66 Op. Att'y Gen. No. 65-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 735, 740.

C.J.S. — 20 C.J.S., Counties, §§ 410, 411.

ALR. — Liability of county or municipality for tortious injury in or about building which is used for both governmental and proprietary functions, 64 ALR 1545.

Applicability to federal courts of state constitutional or statutory provisions regarding liability of county or other political subdivision to suit, 86 ALR 1019.

Liability of county for torts in connection with activities which pertain, or are claimed to pertain, to private or proprietary functions, 16 ALR2d 1079.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge, 2 ALR4th 635.

Liability of governmental entity to builder or developer for negligent issuance of building permit subsequently suspended or revoked, 41 ALR4th 99.

Right of insured, precluded from recovering against owner or operator of uninsured motor vehicle because of governmental immunity, to recover uninsured motorist benefits, 55 ALR4th 806.

State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 ALR4th 204.

Measure and elements of damages for injury to bridge, 31 ALR5th 171.

36-1-5. Service upon county.

In all cases in which a county is a party defendant, service shall be sufficient if perfected upon a majority of the commissioners, in those counties in which the affairs of the county are committed to a county commissioner or a board of county commissioners. (Ga. L. 1872, p. 39, § 1; Code 1873, § 492; Code 1882, § 492; Civil Code 1895, § 342; Civil Code 1910, § 385; Code 1933, § 23-1503; Ga. L. 1987, p. 1482, § 4.)

Cross references. — Further provisions regarding service of process on counties, § 9-11-4(e)(5).

Editor's notes. — The directory language of Ga. L. 1987, p. 1482, § 4 provided "Chapter 5 of Title 36 of the Official Code of Georgia Annotated, relating to the organization of county government, is amended ...." The Code section amended by Ga. L. 1987, p. 1482, § 4, however, is Code Section 36-1-5 which appears in this chapter. Ga. L. 1987, p. 1482, § 4 has been incorporated above as an amendment to this Code section.

Law reviews. — For article comparing sections of Ch. 11, T. 9, the Georgia Civil Practice Act, with preexisting provisions of the Georgia Code, see 3 Ga. St. B.J. 295 (1967).

JUDICIAL DECISIONS

Service on one commissioner insufficient. — Since the statute prescribing the method of service on counties requires service on a majority of the commissioners, service on the county cannot be perfected by serving one member of a board of commissioners. Clayton County v. Sarno, 112 Ga. App. 379, 145 S.E.2d 283 (1965).

Service on chair sufficient. — Service upon the chair of the board of county commissioners under Ga. L. 1972, p. 689, §§ 1-3 (O.C.G.A. § 9-11-4) provides an alternative to serving a suit against a county by serving a majority of the members of the board of commissioners as required by former Code 1933, § 23-1503

(see O.C.G.A. § 36-1-5). Board of Comm'rs v. Allgood, 234 Ga. 9, 214 S.E.2d 522 (1975).

Irregularity in service cured by appearance. — General appearance by answering a petition waives all irregularities in the service of process. Franklin County v. Payne, 115 Ga. App. 52, 153 S.E.2d 732 (1967).

County may employ counsel. — County generally has, in the absence of express authority, implied statutory authority through the county's proper officers or agents, to employ counsel to represent the county in civil suits in which the county is interested, or to which the county is a party. The power to control the fiscal affairs of a county carries with it the power to employ counsel. Templeman v. Jeffries, 172 Ga. 895, 159 S.E. 248 (1931).

All suits by or against a county shall be in the name thereof. — Suit cannot be against the board of commissioners, and a suit so brought cannot be corrected by amendment. Arnett v. Board of Comm'rs, 75 Ga. 782 (1885).

Since the Constitution of 1877 all suits by or against a county must be in the name of a county. Commissioners of Rds. & Revenue v. Howard, 59 Ga. App. 541, 1 S.E.2d 222 (1939).

Cited in Douglas County v. Brown & Riley Enters., Ltd., 114 Ga. App. 410, 151 S.E.2d 510 (1966); Guhl v. Tuggle, 242 Ga. 412, 249 S.E.2d 219 (1978); Housworth v. Glisson, 485 F. Supp. 29 (N.D. Ga. 1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 741.

C.J.S. — 20 C.J.S., Counties, § 418.

ALR. — Power of city, town, or county or its officials to compromise claim, 105 ALR 170; 15 ALR2d 1359.

Waiver of, or estoppel to assert, defects in notice of claim against county or municipality, 148 ALR 637.

Limitation period as affected by requirement of notice or presentation of claim against governmental body, 3 ALR2d 711.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body, 65 ALR2d 1278.

Waiver of, or estoppel to assert, failure to give or defects in notice of claim against state or local political subdivision — modern status, 64 ALR5th 519.

36-1-6. Publication of annual financial statement; contents.

All boards of county commissioners, county commissioners, county managers, or other persons or bodies having charge of receipts and expenditures of county moneys shall publish a financial statement once each calendar year in the paper in which sheriff's advertisements are published in their respective counties. A copy of this statement shall also be posted twice each year for a period of not less than 30 days on the bulletin boards of the various county courthouses. The statement shall set forth the source of all income and a summary of all expenditures in a plain and simple manner that can be easily understood by all taxpaying citizens. The statement shall also contain a report of all money owed by the county, current bills excepted, of the number of tax delinquents, and the total amount of tax delinquency. (Ga. L. 1952, p. 337, §§ 1, 2.)

OPINIONS OF THE ATTORNEY GENERAL

Use of public funds to publish tax delinquent list approved. — Board of commissioners of a county can spend public funds to publish a list of delinquent taxpayers in the local newspaper. 1970 Op. Att'y Gen. No. U70-203.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 318.

36-1-7. Submission to grand jury of sworn returns of receipts and disbursements; approval or disapproval; appearance to explain errors; failure to make return.

(a) The judges of the probate courts, county treasurers, clerks of the superior courts, and sheriffs of the various counties shall make a return, under oath, to the grand juries of their respective counties on the first day of each term of the superior court. The return shall set forth a just and true statement of the amount of money belonging to the county which was received by them and the source from which the money was received, along with their expenditures, accompanied by a copy of the most recent financial statement or annual audit of the financial affairs of the county offices subject to this Code section.

(b) When the returns provided for in subsection (a) of this Code section have been made, the grand jury shall examine the same. If the returns are found to be correct, the grand jury shall endorse its approval thereon and attach the same to its general presentments, to be filed in the office of the clerk of the superior court. If the returns are found to be incorrect, the grand jury, through its foreman, shall return them to the officer making the same, shall plainly and distinctly set forth in writing the grounds of its disapproval, and shall require the officer to appear before the jury and explain the errors.

(c) Should any officer fail or refuse to make the return required by subsection (a) of this Code section, the foreman of the grand jury shall immediately notify the presiding judge of such failure. The judge shall issue an order requiring the delinquent officer to come forward and make the return required or, in default thereof, to be attached for contempt. (Ga. L. 1876, p. 13, §§ 1-3; Code 1882, §§ 508a, 508b, 508c; Civil Code 1895, §§ 364, 365, 366; Civil Code 1910, §§ 413, 414, 415; Code 1933, §§ 23-1201, 23-1202, 23-1203; Ga. L. 1996, p. 842, § 1.)

Cross references. — Frequency with which grand jury must perform duties, § 15-12-71. Accounting for public funds generally, T. 45, C. 8.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Grand Jury, § 34 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 263 et seq., 346.

C.J.S. — 20 C.J.S., Counties, § 314 et seq. 38A C.J.S., Grand Juries, § 88 et seq.

36-1-8. Investment of certain tax proceeds in authorized bonds; registration of bonds.

(a) The officer or officers charged with the administration of the fiscal affairs of the several counties and with the custody and control of such funds may invest all sums collected under the requirements of Article IX, Section V, Paragraph VI of the Constitution of this state, for the purpose of paying the principal of bonded indebtedness of such counties, which sums are not actually payable on the principal within 12 months from the date of collection thereof, in valid outstanding bonds of the county or some other county of the state which have been duly validated, or in valid outstanding bonds of this state or of the United States. Such officer or officers may keep the funds so invested in such bonds, with the privilege of changing the investment from the character of the bonds named to another from time to time as such officer or officers may direct until such time before the maturity of outstanding obligations as may be necessary to dispose of the bonds in order to meet such obligations at maturity.

(b) Whenever and as soon as the sinking fund of any county has been invested in the manner specified in subsection (a) of this Code section, the officer or officers of the county charged with the administration of the fiscal affairs of the county shall proceed forthwith to have the securities in which such funds are so invested registered in the name of the county, provided the bonds by their terms under the conditions of their issue are capable of being registered in the name of the owner. (Ga. L. 1924, p. 86, §§ 1, 2; Code 1933, §§ 87-706, 87-707; Ga. L. 1983, p. 3, § 57.)

Law reviews. — For note discussing and comparing the prudent man rule and the legal list rule in trustee investment, see 15 Mercer L. Rev. 530 (1964).

JUDICIAL DECISIONS

Requirements not absolute. — It must be observed that neither Ga. L. 1917, p. 199, § 1 (see O.C.G.A. § 36-6-16) nor Ga. L. 1924, p. 86, §§ 1, 2 (see O.C.G.A. § 36-1-8) makes their requirements absolute; county treasurers may follow the provisions of either of these statutes, and thereby become absolutely safe from loss, as well as making safe the public funds with which the treasurers are entrusted; however, it appears the county treasurer may keep the funds in the treasurer's possession so long as the county treasurer is prepared to pay them out when lawfully authorized and required so to do. Century Indem. Co. v.

Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932); Allen v. Henderson, 48 Ga. App. 74, 172 S.E. 94 (1933).

This section provides that funds collected for the purpose of payment of principal and interest of bonded indebtedness under the Constitution "may" be invested in valid outstanding bonds of such county or some other county of the state, which have been duly validated, or valid outstanding bonds of the State of Georgia or of the United States. Allen v. Henderson, 48 Ga. App. 74, 172 S.E. 94 (1933) (see O.C.G.A. § 36-1-8).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 263, 345 et seq.

36-1-9. Payment into county treasury.

Any county official, officer, or employee who is charged with the responsibility of collecting, receiving, or disbursing any fees, fines, forfeitures, costs, commissions, allowances, penalties, funds, or moneys, or any other emolument or perquisite for any other county official, officer, or employee who has been placed upon a salary payable from county funds in lieu of receiving such compensation, when provision has been made by law for such compensation to become the property of and payable to the county, may pay said funds directly into the county treasury upon their receipt. (Ga. L. 1964, p. 337, § 1; Ga. L. 1969, p. 3655, § 1; Ga. L. 1971, p. 3563, § 1; Ga. L. 1982, p. 2107, § 30; Ga. L. 1992, p. 1219, § 1.)

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 314 et seq.

36-1-10. Employment of accountant to examine books.

The county governing authority is authorized, whenever it deems it necessary to do so, to employ an expert accountant to examine and report on the books, vouchers, and accounts of any county officer whose duty it is under the law to handle county funds. The expert accountant may reside in the county in which he is to be employed or elsewhere. (Ga. L. 1901, p. 57, § 1; Civil Code 1910, § 418; Code 1933, § 23-1301.)

Cross references. — Budgets and audits of counties and municipalities, Ch. 81 of this title.

JUDICIAL DECISIONS

Section does not impair power of grand jury. — Sections 416, 417, and 418 of former Civil Code 1910 (see O.C.G.A. § 36-1-10) were not intended to and do

not take away from the grand jury the grand jury's power to investigate, inspect, and examine the books and records of county officers, or, where the officers deem it necessary, to appoint one or more citizens of the county to do so, as prescribed by former Penal Code 1910, §§ 840 and 841. McLarty v. Fulton County, 52 Ga. App. 445, 183 S.E. 646 (1936) (see O.C.G.A. §§ 15-12-75, 15-12-76).

Applicability of section to county having city of over 85,000. — Section 841 of Penal Code 1910 (see § 15-12-76 [repealed]) is valid and applies to counties having a city of more than 85,000, except that it does not authorize the appointment of expert accountants by the county commissioners or ordinary (now judge of the probate court), as the case may be, to examine the books and accounts of county officers, as by virtue of former Code 1910, §§ 416 through 418 (see O.C.G.A. § 36-1-10). In such counties the clerk of the county commissioners is ex officio auditor and the clerk is required to make such examination whenever called on by the county commissioners. McLarty v. Fulton County, 52 Ga. App. 445, 183 S.E. 646 (1936).

Officer employed under section a public officer. — When a statute by implication authorizes the county commissioners to appoint an officer in and for a county, the action of the commissioners in so doing is done by the commissioners as an agency of the state. The relation between the county and the county attorney does not rest upon contract, but arises from appointment authorized by a legislative enactment. An individual who has a designation or title given the individual by law, and who exercises functions concerning the public assigned to the individual by law, is a public officer. Stelling v. Richmond County, 81 Ga. App. 571, 59 S.E.2d 414 (1950).

Residency requirement. — In the case of a county auditor, the residency requirement of former Code 1933, § 89-101(7) (see O.C.G.A. § 15-6-59) is dispensed with by former Code 1933, § 23-1301 (see O.C.G.A. § 36-1-10). However, the requirement that a county officer, whether elected or appointed, be a qualified voter remains absolute. Lester Witte & Co. v. Rabun County, 245 Ga. 382, 265 S.E.2d 4 (1980).

Cited in Watkins v. Tift, 177 Ga. 640, 170 S.E. 918 (1933); Booth v. Mitchell, 179 Ga. 522, 176 S.E. 396 (1934); Burke v. Wheeler County, 54 Ga. App. 81, 187 S.E. 246 (1936); Mathew v. Ellis, 214 Ga. 665, 107 S.E.2d 181 (1959).

OPINIONS OF THE ATTORNEY GENERAL

Accountant not a certified public accountant. — County commissioners are authorized to employ an accountant who is not a certified public accountant to audit county books. 1968 Op. Att'y Gen. No. 68-46.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 208 et seq.

36-1-11. Additional temporary personnel and equipment for assistance of county officers or departments.

The governing authorities of the various counties shall have the authority to expend county funds for the purpose of employing such additional temporary personnel and providing such equipment and supplies as in their respective judgments shall be necessary and advisable, in order that such personnel and equipment might assist any county officer, official, or department in discharging his or its duties and responsibilities in an efficient and orderly fashion. Nothing contained

within this Code section shall be construed so as to abrogate the authority of such officers and officials to select the personnel who shall be employed within their respective offices and departments. (Ga. L. 1968, p. 447, § 1.)

JUDICIAL DECISIONS

Authority to pay salary. — County commissioners can expend county funds for the limited purpose of paying salary of personnel to aid and assist in administration of county government. Whatley v. Taylor County, 224 Ga. 669, 164 S.E.2d 121 (1968).

OPINIONS OF THE ATTORNEY GENERAL

County may employ additional personnel. — County is authorized to employ personnel to assist the tax assessors in maintaining the tax digest and the tax equalization program in the county. 1969 Op. Att'y Gen. No. 69-25.

Governing authority of a county may hire temporary personnel to assist the clerk of the superior court. 1969 Op. Att'y Gen. No. 69-400.

This section authorizes the county commissioners to employ a secretary for the sheriff on a temporary basis. Op. Att'y Gen. No. U71-11 (see O.C.G.A. § 36-1-11).

County may not pay salary to employee on fee basis. — Governing authority of a county is not authorized to pay the salary of a semipermanent employee of a county officer who is on a fee basis. 1969 Op. Att'y Gen. No. 69-478.

When compensation of deputy sheriff is fixed by a local act, the county commissioners have no authority to increase the compensation. 1970 Op. Att'y Gen. No. U70-64.

RESEARCH REFERENCES

ALR. — Particular purposes within contemplation of statute authorizing issuance of bonds or use of funds by school district for specified purposes, 124 ALR 883.

36-1-11.1. Expenditure of funds for insurance and employment benefits.

(a) The governing authority of any county is authorized to provide, and to expend county funds for the provision of, group health, life, disability, and liability insurance, retirement or pension coverage, social security and employment security coverage, and other similar or related employment benefits for members of the county governing authority and for elected county officers and the personnel thereof, as well as for the dependents and beneficiaries of such officials and personnel; provided, however, that no member of a county governing authority may become vested in the provision of any retirement or pension benefits authorized by this subsection until after the next general election in which said official stands for reelection.

(b) Any prior expenditure of county funds in the manner authorized by this Code section is validated and confirmed; and no person shall be liable in any respect by reason of his or her participation in any prior provision of the benefits authorized by this Code section. (Code 1981, § 36-1-11.1, enacted by Ga. L. 1989, p. 1284, § 1; Ga. L. 1995, p. 924, § 1; Ga. L. 1996, p. 1258, § 1.)

36-1-12. Courthouse to remain open during normal working hours.

It shall be the duty and responsibility of the governing authority of each county of this state to keep the county courthouse and the county offices maintained therein open during normal working hours for the transaction of the public's business. As used in this Code section, "normal working hours" means a minimum of 40 working hours during each calendar week, except for those weeks during which public and legal holidays, which are recognized and designated as such by Georgia law or by the governing authority of the county, are observed. (Code 1933, § 23-103, enacted by Ga. L. 1976, p. 1522, § 1.)

Cross references. — Hours of operation of office of superior court clerk, § 15-6-93.

JUDICIAL DECISIONS

Courthouse and offices must be open for public's business. — Under this section it is not only the duty of the county commissioners to keep the courthouse building and county offices therein available, but it is also the commissioner's duty to see that county offices are open for the transaction of the public's business. Mobley v. Polk County, 242 Ga. 798, 251 S.E.2d 538 (1979) (see O.C.G.A. § 36-1-12).

Governing authority to determine hours. — Legislature has delegated to the governing authority the right to determine normal working hours with a minimum of 40 working hours during each week. Mobley v. Polk County, 242 Ga. 798, 251 S.E.2d 538 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Applicability of section. — This section, in referring to "county offices", is intended to regulate the hours of only those offices over which the governing authority of the county exercises control. 1976 Op. Att'y Gen. No. U76-35 (see O.C.G.A. § 36-1-12).

36-1-13. Speculation in county orders by county officer.

Any public officer of any county in this state who buys up at a discount or in any manner speculates in what are known as "county orders," "jury scrip," or any other order or scrip which is to be paid out of any public fund of this state or of any county in this state shall be guilty of a misdemeanor and shall be removed from office. (Ga. L.

1878-79, p. 79, § 1; Code 1882, § 4562g; Penal Code 1895, § 277; Penal Code 1910, § 281; Code 1933, §§ 23-9909, 23-1610.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 369.

36-1-14. Interested transactions prohibited; removal from office for violation.

(a) No county governing authority, any member thereof, or any other county officer authorized by law to use public or county funds for the purchase of goods or property of any kind for public or county purposes shall purchase such goods or property from any store in which such county governing authority, any member thereof, or other county officer is an employee, or in which he is directly or indirectly interested, or from any person or partnership of which he is a member or by whom he is employed, unless by sanction of the majority of the members of the county governing authority or unless it is made clearly to appear that such individual, partnership, or owner of the store offers and will sell the goods or property as cheaply as or cheaper than the same can be bought elsewhere.

(b) Any county governing authority, any member thereof, or any county officer violating subsection (a) of this Code section shall be removed from office upon proper proceedings instituted by any taxpayer in the county. Any contract made in violation of subsection (a) of this Code section shall be illegal. (Ga. L. 1898, p. 105, §§ 1, 2; Ga. L. 1899, p. 68, § 1; Ga. L. 1901, p. 81, § 1; Civil Code 1910, §§ 393, 394; Code 1933, §§ 23-1713, 23-1714.)

Law reviews. — For article surveying important general legal principles of municipal and county government purchasing and contracting in Georgia, see 16 Mercer L. Rev. 371 (1965).

JUDICIAL DECISIONS

By its terms this section is of general application. Moore v. Whaley, 189 Ga. 647, 7 S.E.2d 394 (1940) (see O.C.G.A. § 36-1-14).

Section subject to qualification by special Act. — This section, so far as it refers to county commissioners, is subject to qualification by special Acts under Ga. Const. 1976, Art. IX, Sec. I, Paras. VI and VII (see Ga. Const. 1983, Art. IX, Sec. I, Para. I), and the special Acts need not be uniform. Robitzsch v. State, 189 Ga. 637, 7 S.E.2d 387 (1940); Moore v. Whaley, 189 Ga. 647, 7 S.E.2d 394 (1940) (see O.C.G.A. § 36-1-14).

Section not preempted by Georgia Constitution. — Georgia Const. 1976, Art. IX, Sec. I, Para. VIII (see Ga. Const. 1983, Art. IX, Sec. I, Para. III), providing for removal of county officers for malpractice in office, does not preempt this section which prohibits use of county funds by county commissioners for purchases of goods or property in which the commis-

sioners have an interest. Palmer v. Wilkins, 163 Ga. App. 104, 294 S.E.2d 355 (1982) (see O.C.G.A. § 36-1-14).

General Assembly had authority to effect a pro tanto repeal of the general law contained in this section, by making the provisions of this section inapplicable to the commissioners of a named county. Moore v. Whaley, 189 Ga. 647, 7 S.E.2d 394 (1940) (see O.C.G.A. § 36-1-14).

Not applicable to mere acceptance of order for payment. — This section does not apply to an acceptance of an order for payment submitted by a materialman on a contract for the building of a road. Eatonton Oil & Auto Co. v. Greene County, 53 Ga. App. 145, 185 S.E. 296 (1936) (see O.C.G.A. § 36-1-14).

Quo warranto is not the proper remedy for violation of this section. McDonough v. Bacon, 143 Ga. 283, 84 S.E. 588 (1915) (see O.C.G.A. § 36-1-14).

Due process requirement for proceedings. — Phrase "upon proper proceedings" used in subsection (b) implies that proceedings will be conducted in accordance with due process requirements, and it is not necessary to specify the exact procedure to be followed. Palmer v. Wilkins, 163 Ga. App. 104, 294 S.E.2d 355 (1982) (see O.C.G.A. § 36-1-14).

Commissioner's transfer of building, which benefitted county, did not require commissioner's removal. — Trial court properly harmonized Ga. L. 1983, pp. 4594, 4603, § 14, the Local Act creating the Miller County Board of Commissioners, and O.C.G.A. § 36-1-14 to find that a commissioner's actions in transferring a building the commissioner owned to the county, which benefitted the county at no cost to taxpayers, did not require the commissioner's removal. Richardson v. Phillips, 309 Ga. App. 773, 711 S.E.2d 358 (2011).

Sufficiency of evidence for summary judgment. — Evidence that the hauling fee paid to a county commissioner was the same as that which would have been paid to anyone else does not, on motion for summary judgment where all inferences are construed against the movant, satisfy the requirement that it shall clearly appear that the goods purchased were as cheap or cheaper than the goods could be bought elsewhere. Dalton Rock Prods. Co. v. Fannin County, 136 Ga. App. 649, 222 S.E.2d 93 (1975).

Claim for removal from office not rendered moot by the completion of the questioned transaction. — Taxpayer's claims seeking the removal of a county commissioner from office for violation of conflict of interest laws, Ga. Laws 1983, pp. 4594, 4603, § 14, and O.C.G.A. § 36-1-14, had never been determined; nor were the issues moot, although the transaction leading to the claims had been completed. Therefore, a trial court erred in dismissing the claims as moot. Richardson v. Phillips, 302 Ga. App. 305, 690 S.E.2d 918 (2010).

Ordinance not preempted by statute. — Miller County, Ga., Ordinance No. 10-01, § 3 could not be preempted by O.C.G.A. § 36-1-14 because § 3 did not impair the statute's operation but rather strengthened and augmented the statute; the exception in § 3 was more narrow than in O.C.G.A. § 36-1-14, requiring that a majority of the Board of Commissioners of Miller County approve the contract or transaction after establishing that the goods and the County had authority, as an incident of the county's home rule power, to amend Ga. L. 1983, p. 4594, § 14. Bd. of Comm'rs v. Callan, 290 Ga. 327, 720 S.E.2d 608 (2012).

Cited in Eatonton Oil & Auto Co. v. Greene County, 53 Ga. App. 145, 185 S.E. 296 (1936); Colonial Oil Co. v. United States Guarantee Co., 56 F. Supp. 545 (S.D. Ga. 1944).

OPINIONS OF THE ATTORNEY GENERAL

Purchase of insurance from wife. — County board of education may purchase insurance from the wife of a member of the board when there is no direct or indirect benefit gained by the member. 1960-61 Op. Att'y Gen. p. 158.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 169 et seq., 184 et seq., 197, 375.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 244, 245.

ALR. — Relation as creditor of contracting party as constituting interest within statute or rule of common law against public officer being interested in contract with the public, 73 ALR 1352.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract, 74 ALR 792.

Public officer's relation to corporation as officer or stockholder as constituting interest within statute or rule of common law against public officer being interested in contract with public, 140 ALR 344.

36-1-15. Prohibition, regulation, and taxation of fortunetelling and similar practices.

The county governing authority may by proper ordinance prohibit, regulate, or tax the practice of fortunetelling, phrenology, astrology, clairvoyance, palmistry, or other kindred practices, businesses, or professions where a charge is made or a donation accepted for the services and where the practice is carried on outside the corporate limits of the municipality. The tax, if any, which is imposed shall not exceed the sum of $1,000.00 per year. Such ordinances may prescribe the punishment to be imposed for violations, but such punishment shall not exceed imprisonment for 60 days or a fine of $500.00 or both. Prosecutions for violations shall be in the magistrate court of the county as provided in Chapter 10 of Title 15. (Ga. L. 1953, Nov.-Dec. Sess., p. 311, § 1; Ga. L. 1984, p. 505, § 1.)

JUDICIAL DECISIONS

City ordinance presumed valid. — Presumption in favor of the validity of a city ordinance is not overcome in a case involving a constitutional attack thereon when it is merely assumed that the practice of fortunetelling is a legitimate calling which cannot be prohibited by the city under the city's police power. Williams v. Jenkins, 211 Ga. 10, 83 S.E.2d 614 (1954).

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Fortunetelling, § 1 et seq.

C.J.S. — 16A C.J.S., Constitutional Law, §§ 681 et seq., 736, 747 et seq., 772 et seq.

ALR. — Validity of license tax or fee on show or place of amusement, 111 ALR 778.

Regulation of astrology, clairvoyancy, fortunetelling, and the like, 91 ALR3d 766.

36-1-16. Garbage, trash, waste, or refuse not to be transported across state or county boundaries for dumping without permission; exemption.

(a) No person, firm, corporation, or employee of any municipality shall transport, pursuant to a contract, whether oral or otherwise, garbage, trash, waste, or refuse across state or county boundaries for the purpose of dumping the same at a publicly or privately owned dump, unless permission is first obtained from the governing authority of the county in which the dump is located and from the governing authority of the county in which the garbage, trash, waste, or refuse is collected.

(b) Subsection (a) of this Code section shall not apply to the transportation of any material which is regulated pursuant to Article 2 of Chapter 5 of Title 12, the "Georgia Water Quality Control Act," or Article 1 of Chapter 9 of Title 12, "The Georgia Air Quality Act." (Ga. L. 1971, p. 445, § 1; Ga. L. 1978, p. 1911, § 1; Ga. L. 1990, p. 1345, § 1; Ga. L. 1992, p. 918, § 3; Ga. L. 1993, p. 91, § 36.)

Cross references. — Solid waste handling, disposal, generally, T. 12, C. 8.

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 262 (2008). For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007) and 60 Mercer L. Rev. 457 (2008).

For note on 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 186 (1992).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 36-1-16 is constitutional, and the statute gives Georgia counties a role in protecting the public health and welfare with respect to the operation of waste dumps within the counties' respective boundaries. Diamond Waste, Inc. v. Monroe County, 939 F.2d 941 (11th Cir. 1991).

O.C.G.A. § 36-1-16(a) is unconstitutional because the statute impairs interstate commerce by improperly giving Georgia counties the power to veto the importation of solid waste. Fulton County v. City of Atlanta, 280 Ga. 353, 629 S.E.2d 196 (2006).

Unconstitutional application. — County's application of O.C.G.A. § 36-1-16 to prohibit a waste management company from operating a landfill, which was owned by a municipality but located in the county, as a regional landfill, i.e., from receiving waste from outside the county and from outside the state, violated the company's constitutional commerce clause right to engage in interstate commerce without discriminatory intervention. Diamond Waste, Inc. v. Monroe County, 731 F. Supp. 505 (M.D. Ga. 1990), aff'd in part, vacated in part on other grounds, 939 F.2d 941 (11th Cir. 1991).

County resolution preventing a waste management firm from importing waste of any kind into the county from other counties and other locations violated the commerce clause of the federal constitution. Diamond Waste, Inc. v. Monroe County, 939 F.2d 941 (11th Cir. 1991).

Judgments from federal court binding on state court during appeal. — Since simultaneous actions challenging the constitutionality of O.C.G.A. § 36-1-16 were pending in state and federal court, and an appeal from the federal district court order was pending, estoppel by judgment precluded state court consid-

eration of the matter on appeal because judgments from a federal court remain binding during the pendency of an appeal. Mayor of Forsyth v. Monroe County, 260 Ga. 296, 392 S.E.2d 865 (1990).

RESEARCH REFERENCES

ALR. — Validity of statutory or municipal regulations as to garbage, 72 ALR 520; 135 ALR 1305.

Regulation and licensing of private garbage or rubbish removal services, 83 ALR2d 799.

36-1-17. Authority of county employees to issue citations for violation of ordinances and regulations in counties having population of 550,000 or more; jurisdiction; effect of failure to respond.

In all counties of this state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census, any employee who is authorized to enforce any county code, ordinance, regulation, rule, or other order, including such related ordinances, codes, and regulations as drainage regulations, soil erosion and sedimentation control regulations, subdivision and zoning regulations, water and sewer regulations, and any other land development or construction regulations of such counties, shall have the authority to issue citations to any person who shall violate any such county code, ordinance, regulation, or order which shall be in effect in such counties. Such citations shall command the appearance of such person at a designated regular session of a court in such county having the jurisdiction of a commitment court throughout the entire county. At such time and place, the court shall act as a court of inquiry with all the powers and authorities specified in Article 2 of Chapter 7 of Title 17. In the event that any such person shall fail to appear in response to such citation, a warrant shall be issued for the arrest of the person for violation of such county code, ordinance, regulation, rule, or order without the necessity of any further action. (Ga. L. 1981, p. 3261, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Probate court jurisdiction over violations of county ordinances. — Probate court has jurisdiction over violations of county ordinances in counties of 550,000 or more pursuant to O.C.G.A. § 36-1-17. 1995 Op. Att'y Gen. No. U95-1.

36-1-18. Authority of counties having population of 550,000 or more to assess against cost of repairing streets as necessitated by private construction activity; liens.

(a) In all counties of this state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census, the county governing authority shall be empowered

by ordinance or resolution to assess against any property the cost of reopening or repairing any public way, street, road, right of way, or highway, or the cost of cleaning up from any public way, street, road, right of way, or highway any debris, dirt, sediment, soil, trash, building materials, and other physical materials originating on such property, as a result of any private construction activity carried on by any developer, contractor, subcontractor, or owner of such property.

(b) Any assessment authorized under subsection (a) of this Code section, as well as the interest thereon and the expense of collection, shall be a lien against the property so assessed coequal with the lien of other taxes and shall be enforced in the same manner as are state and county ad valorem property taxes by issuance of a fi. fa. and levy and sale as set forth in Title 48, the "Georgia Public Revenue Code." (Ga. L. 1981, p. 3259, §§ 1, 2.)

36-1-19. Appropriation for charitable grants or contributions in counties having population greater than 550,000; establishment of boards or councils to devise procedures and advise governing authority.

Reserved. Repealed by Ga. L. 1996, p. 1415, § 1, effective July 1, 1996.

Editor's notes. — This Code section was based on Ga. L. 1980, p. 3406, §§ 1, 2; Ga. L. 1982, p. 2107, § 31.

36-1-19.1. Appropriations for charitable grants or contributions in counties having population of 400,000 or more; boards or councils to establish procedures and advise governing authorities.

(a) In all counties of this state having a population of 400,000 or more according to the United States decennial census of 1990 or any future such census, the governing authorities of such counties are authorized to provide by ordinance for the appropriation of money for and the making of grants or contributions to any corporation, association, institution, or individual for purely charitable purposes, provided that the activities funded by any such grants or contributions shall take place within the county making such grant or contribution.

(b) In connection with the appropriation of money for or the making of any grant or contribution for purely charitable purposes, the governing authority of any county within this state may establish such boards or councils as it may determine to establish the procedures by which such grants or contributions are made and to advise the governing authorities of such counties generally with respect to such grants or contributions.

(c) Appropriations, grants, and contributions made pursuant to this Code section shall be in the form of contracts for services.

(d) For the purpose of this Code section, "purely charitable purposes" shall mean charitable, benevolent, or philanthropic purposes for health, education, social welfare, arts and humanities, or environmental organizations.

(e) No funds may be appropriated, granted, or contributed under this Code section for a purpose which is in violation of the laws of this state; provided, however, that this subsection shall not be interpreted to prohibit a good faith expenditure of funds for purposes authorized by law. (Code 1981, § 36-1-19.1, enacted by Ga. L. 1996, p. 1415, § 2; Ga. L. 1999, p. 81, § 36.)

36-1-20. Ordinances for governing and policing of unincorporated areas of county.

(a) The governing authority of each county, for the purpose of protecting and preserving the public health, safety, and welfare, is authorized to adopt ordinances for the governing and policing of the unincorporated areas of the county, violations of which ordinances may be punished by fine or imprisonment or both. Without limiting the generality of the foregoing, such ordinances may provide for traffic regulation, including adoption of the uniform rules of the road under Chapter 6 of Title 40, may provide for the regulation and control of litter in the same manner as municipal ordinances under Code Section 16-7-48, and may provide for the implementation and enforcement of any power or duty vested in the county governing authority.

(b) Each such ordinance shall specify the maximum punishment which may be imposed for a violation of the ordinance; and in no case shall the maximum punishment for the violation of any such ordinance exceed a fine of $1,000.00 or imprisonment for 60 days or both; provided, however, that for violation of a pretreatment standard or requirement adopted pursuant to the federal Clean Water Act the ordinance may specify that the fine may be up to $1,000.00 per day for each violation by an industrial user.

(c) Jurisdiction over violations of such county ordinances shall be in the magistrate court of the county; and procedure for enforcement of such ordinances shall be as provided in Article 4 of Chapter 10 of Title 15; provided, however, jurisdiction over ordinances having to do with traffic offenses shall be in the court or courts having jurisdiction over state traffic offenses.

(d) This Code section shall not affect the jurisdiction of or procedure in any other court which has jurisdiction over violations of county

ordinances. (Code 1981, § 36-1-20, enacted by Ga. L. 1984, p. 1086, § 1; Ga. L. 1990, p. 1345, § 2; Ga. L. 1991, p. 993, § 1.)

JUDICIAL DECISIONS

Cited in Kariuki v. DeKalb County, 253 Ga. 713, 324 S.E.2d 450 (1985); Curves, LLC v. Spalding County, Georgia, 569 F. Supp. 2d 1305 (N.D. Ga. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Jurisdiction over offense of open container of alcohol in vehicle. — In counties in which there is a state court, both the state court and the magistrate court of the county possess concurrent jurisdiction over the prosecution of individuals charged with violating a county ordinance prohibiting the possession of open containers of alcohol while operating a motor vehicle. 1992 Op. Att'y Gen. No. U92-3.

Regulation of trucks on residential roads. — County sheriff's department may enforce ordinances prohibiting trucks over ten wheels from using residential roads within county except when making temporary deliveries. 1996 Op. Att'y Gen. No. U96-17.

Traffic control ordinances. — Counties may enact ordinances regarding enforcement of traffic control devices by the use of cameras. 2000 Op. Att'y Gen. No. U2000-12.

36-1-21. Civil service system for county employees.

(a) The governing authority of any county is authorized to provide by ordinance or resolution for the creation of a civil service system for employees of the county, other than elected officials or persons appointed to positions for specified terms.

(b) Subsequent to the creation of a civil service system, the county governing authority which created the system may provide by ordinance or resolution that positions of employment within departments subject to the jurisdiction of elected county officers or subject to the jurisdiction of other commissions, boards, or bodies of the county shall be subject to and covered by the civil service system upon the written application of the elected county officer, commission, board, or body having the power of appointment, employment, or removal of employees of the officer, department, commission, board, or body. Once positions of employment are made subject to the civil service system, such positions shall not be removed thereafter from the coverage of the civil service system.

(c) A civil service system created pursuant to the authority of this Code section shall be administered in such manner and pursuant to such rules and regulations as may be provided for by resolution or ordinance of the county governing authority which created the system.

(d)(1) The powers granted to the governing authorities of counties by this Code section:

(A) Shall not supersede or replace any power granted by any local constitutional amendment to the General Assembly to provide by law for a civil service or merit system for any county;

(B) Shall not supersede or replace any law enacted by the General Assembly pursuant to the authority of a local constitutional amendment described in subparagraph (A) of this paragraph; and

(C) Shall be in addition to any power granted by local constitutional amendment directly to the governing authority of any county to provide by ordinance or resolution for a civil service or merit system for such county.

(2) As used in paragraph (1) of this subsection, the term "local constitutional amendment" means any constitutional amendment described in subparagraph (a) of Paragraph IV of Section I of Article XI of the Constitution of the State of Georgia which has been continued in force and effect pursuant to the authority of said subparagraph (a) of said cited constitutional provision and which has not been repealed pursuant to the authority of subparagraph (b) of said cited constitutional provision. (Code 1981, § 36-1-21, enacted by Ga. L. 1986, p. 764, § 1; Ga. L. 1988, p. 1627, § 1; Ga. L. 2001, p. 4, § 36.)

Code Commission notes. — Ga. L. 1986, p. 764, § 1 and Ga. L. 1986, p. 1586, § 1 both enacted Code sections designated 36-1-21. The Code section enacted by the latter Act was redesignated as Code Section 36-1-22 [repealed] pursuant to Code Section 28-9-5.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Motion to create system. — Motion adopted by the board of county commissioners creating a county personnel system was a "resolution" within the meaning of O.C.G.A. § 36-1-21. Wayne County v. Herrin, 210 Ga. App. 747, 437 S.E.2d 793 (1993).

Inapplicable to system created by General Assembly. — Because a county tax commissioner's employees were within the county's civil service system, the county was properly granted summary judgment as to that issue, and hence, the county's personnel director was authorized to refuse to implement raises to the employees as the commissioner sought; moreover, the commissioner's reliance on O.C.G.A. § 36-1-21 did not change the result, as that statute expressly applied only to civil service systems created by county governing authorities, and the civil service system at issue was created by the Georgia General Assembly. Ferdinand v. Bd. of Comm'rs, 281 Ga. 643, 641 S.E.2d 787 (2007).

Subsequent ordinance or resolution. — After the governing body of a county has authorized, by ordinance or resolution, the creation of a civil service commission to cover county employees other than elected officials or persons appointed for a definite term, it may by subsequent ordinance or resolution provide that employees of the departments of elected officials or other county bodies may, by written application of the elected official or other department head, seek to be brought under the civil service commis-

sion as well. Burbridge v. Hensley, 194 Ga. App. 523, 391 S.E.2d 5, cert. denied, 194 Ga. App. 911, 391 S.E.2d 5 (1990).

Interim appointed sheriff's attempt, by letter to the county clerk, to have the sheriff's employees covered by the provisions of a civil service ordinance was invalid, since the county had not enacted a second ordinance or resolution pursuant to subsection (b) of O.C.G.A. § 36-1-21 providing that employees of elected officials could be made subject to the civil service system by written application of the elected official. Burbridge v. Hensley, 194 Ga. App. 523, 391 S.E.2d 5, cert. denied, 194 Ga. App. 911, 391 S.E.2d 5 (1990).

Resolution of the board of county commissioners that allowed elected county officials to bring portions of employment within their department into the personnel system complied with the dictates of O.C.G.A. § 36-1-21. Wayne County v. Herrin, 210 Ga. App. 747, 437 S.E.2d 793 (1993).

Appointment and discharge of deputies. — Once positions in a sheriff's office have been made subject to a personnel or civil service system, a sheriff's authority to appoint deputies pursuant to O.C.G.A. § 15-16-23 is limited to vacancies created by the removal of employees in the manner provided under the applicable personnel or civil service system or vacancies created when employees resign or retire. Wayne County v. Herrin, 210 Ga. App. 747, 437 S.E.2d 793 (1993).

Since the county created a personnel system applicable to the sheriff's department, a newly elected sheriff's termination of current employees without affording the employees due process rights in connection with the employees' dismissal and the sheriff's hiring of employees to replace the dismissed employees was improper. Wayne County v. Herrin, 210 Ga. App. 747, 437 S.E.2d 793 (1993).

Since it was not clearly established at the time in question that a sheriff was bound by a county merit system and that employees of the sheriff had a property interest in the employees' jobs, the sheriff was entitled to qualified immunity from the employees' claim of wrongful termination from the employee's jobs. Aspinwall v. Herrin, 879 F. Supp. 1227 (S.D. Ga. 1994).

Deputy sheriffs in a county that had not adopted a civil service program were employees at will and lacked a property interest in the deputies' employment. Zimmerman v. Cherokee County, 925 F. Supp. 777 (N.D. Ga. 1995).

Under O.C.G.A. § 15-16-23, sheriffs have absolute discretion in the hiring and firing of deputies and the only process by which this discretion may be limited is through adoption of a civil service system in compliance with subsection (b) of O.C.G.A. § 36-1-21; when a sheriff had not complied with such provision, deputies had no protected property interest in the deputies' positions. Brett v. Jefferson County, 925 F. Supp. 786 (S.D. Ga. 1996), aff'd in part and vacated in part, 123 F.3d 1429 (11th Cir. 1997).

Because sheriff had failed to satisfy statutory requirements for placing deputies under a civil service program, the deputies were at-will employees with no protected property interest in continued employment. Brett v. Jefferson County, 123 F.3d 1429 (11th Cir. 1997).

Termination of employee. — Employee who was hired by a county solicitor general under O.C.G.A. § 15-18-71 was not an employee of the county, and the solicitor general did not bring the employee into the county's civil service system under O.C.G.A. § 36-1-21(b). Therefore, the employee lacked a protected property interest in the job and could be terminated without cause and without a hearing. Thomas v. Lee, 286 Ga. 860, 691 S.E.2d 845 (2010).

Court clerk not subject to county merit system. — County merit board can take no action affecting the clerk of the superior court and the clerk's employees unless the clerk of the superior court has asked that the clerk's office be subject to the merit system and the county has provided for such coverage through an appropriate resolution or ordinance. Gwinnett County v. Yates, 265 Ga. 504, 458 S.E.2d 791 (1995).

Clerk of the Superior Court of Gwinnett County is not subject to the Gwinnett County Merit System. Gwinnett County v. Yates, 265 Ga. 504, 458 S.E.2d 791 (1995).

Cited in Floyd v. Chaffin, 201 Ga. App. 597, 411 S.E.2d 570 (1991); Epps v. Wat-

son, No. 3:05-CV-68(CDL), 2006 U.S. Dist. LEXIS 33318 (M.D. Ga. May 25, 2006).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 5B Am. Jur. Pleading and Practice Forms, Civil Service, § 2.

36-1-22. Business and occupational license taxes and fees.

Reserved. Repealed by Ga. L. 1993, p. 1292, § 6, effective January 1, 1995.

Editor's notes. — This Code section was based on Code 1981, § 36-1-22, enacted by Ga. L. 1986, p. 1586, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 1734, § 1; Ga. L. 1989, p. 14, § 36.

36-1-23. Purchase from county of materials used in the construction of water systems, sewer systems, storm and drainage systems, buildings, or other facilities.

(a) No county shall require any person who performs services on his property or on private property pursuant to an agreement with an individual, corporation, partnership, association, or other private entity to purchase from the county any materials used in the construction or repair of any water system, sewer system, storm or drainage system, building, or other facilities on such property. Any county which sells such materials used in the construction of such facilities shall be required to publish the acceptable manufacturing or engineering standards of such materials sold by the county and such other materials, if any, which the county finds acceptable for the construction of such facilities. In the construction of any such facility, the use by any person or other entity of materials which are not purchased from the county shall not render any such facility or project ineligible for acceptance as a public right of way or utility project if the materials used meet the acceptable standards published by the county.

(b) Nothing in this Code section shall affect the authority of a county to enact building, construction, electrical, fire, or other codes which require materials used in the construction or repair of water systems, sewer systems, storm or drainage systems, buildings, or other facilities to meet or satisfy certain standards.

(c) Any county officer or employee who, without sufficient cause, refuses to accept as a public right of way or utility project any water and sewer system or other facility constructed with acceptable materials not purchased from the county shall be guilty of a misdemeanor.

(d) Upon the final conviction of any county officer or employee of violating subsection (c) of this Code section, the employment of such

officer or employee by the county shall immediately be terminated. (Code 1981, § 36-1-23, enacted by Ga. L. 1991, p. 1002, § 1; Ga. L. 1992, p. 3212, § 1.)

Editor's notes. — Former Code Section 36-1-23, pertaining to preservation and protection of abandoned or unmaintained cemeteries, was enacted by Ga. L. 1988, p. 318, § 1 and repealed by Ga. L. 1989, p. 14, § 36.

36-1-24. Training classes for clerks of governing authority of county.

(a) Any person hired or appointed to serve as the clerk of the governing authority of any county in this state shall attend and complete a course of training on matters pertaining to the basic performance of his or her official duties. Such training shall be conducted by the University of Georgia under the supervision of the Carl Vinson Institute of Government at such time and place as shall be determined by the Carl Vinson Institute of Government.

(b) The personnel of the Carl Vinson Institute of Government are authorized to work with the members of the Association County Clerks of Georgia and the Association County Commissioners of Georgia in establishing and operating the training course provided for in subsection (a) of this Code section, as well as establishing the rules and regulations governing attendance of such training.

(c) All reasonable expenses of attending the training class required by this Code section shall be paid from funds appropriated by the county governing authority for such purposes. (Code 1981, § 36-1-24, enacted by Ga. L. 1990, p. 1689, § 1.)

36-1-25. Official minutes of meetings.

Official minutes of the meetings of a county governing authority shall be maintained in the offices of the county governing authority. Copies of contracts, maps, or similar material or documents related to actions taken by a county governing authority may be included in the minutes or incorporated by reference to an alternate location. Where incorporated by reference, such documents shall be stored in a central location or locations identified by ordinance or resolution of the county governing authority. (Code 1981, § 36-1-25, enacted by Ga. L. 1994, p. 662, § 1.)

JUDICIAL DECISIONS

Zoning map properly incorporated by reference. — County zoning ordinance properly incorporated by reference an official zoning map as the board of commissioners had a zoning map before the board when the board considered the

ordinance, the zoning map was in existence when a limited liability limited partnership (LLLP) bought the property and that map was kept in the zoning administrator's office, the new zoning administrator's uncertainty about which of two maps was the official map did not render the entire zoning ordinance invalid, and it was clear that the LLLP's land was not zoned for a landfill. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344 (2004).

36-1-26. Contracts for utility services; terms and conditions.

The governing authority of any county in this state may authorize the execution of one or more contracts which specify the rates, fees, or other charges which will be charged and collected by the county for electric, natural gas, or water utility services to be provided by the county to one or more of its utility customers. Any such contract shall be subject to the following conditions and limitations:

(1) No such contract shall be for a term in excess of ten years;

(2) Any such contract which is for a term in excess of two years shall include commercially reasonable provisions under which the rates, fees, or other charges shall be adjusted with respect to inflationary or deflationary factors affecting the provision of the utility service in question; and

(3) Any such contract shall include commercially reasonable provisions relieving the county from its obligations under the contract in the event that the county's ability to comply with the contract is impaired by war, natural disaster, catastrophe, or any other emergency creating conditions under which the county's compliance with the contract would become impossible or create a substantial financial burden upon the county or its taxpayers. (Code 1981, § 36-1-26, enacted by Ga. L. 1998, p. 1113, § 1.)

CHAPTER 2

MILITIA DISTRICTS

Sec.
36-2-1. Division of county into militia districts.
36-2-2. Minimum requirements for districts.
36-2-3. Appointment of commissioners to change districts; employment and compensation of surveyor; approval of commissioners' report by judge of probate court.
36-2-4. Transmittal of proceedings changing districts to Governor; publication.
36-2-5 through 36-2-7 [Repealed].

JUDICIAL DECISIONS

Effect of recognition of old district line by commissioners after change of line. — Public would not be estopped by any subsequent acts of the board of commissioners in recognizing an old line between two districts as the correct dividing line, had the district lines been changed in compliance with the requirements of law. Camp v. Trapp, 209 Ga. 298, 71 S.E.2d 534 (1952).

Cited in United States v. Bibb County Democratic Executive Comm., 222 F. Supp. 493 (M.D. Ga. 1962); Grimes v. Clark, 226 Ga. 195, 173 S.E.2d 686 (1970).

36-2-1. Division of county into militia districts.

(a) Each county is divided into militia districts according to its territory and population.

(b) Militia districts are to remain the same as presently organized until changed in the manner prescribed in this chapter. (Orig. Code 1863, §§ 453, 454; Code 1868, §§ 515, 516; Code 1873, §§ 481, 482; Code 1882, §§ 481, 482; Civil Code 1895, §§ 330, 331; Civil Code 1910, §§ 373, 374; Code 1933, §§ 23-201, 23-202.)

JUDICIAL DECISIONS

Cited in Johnson v. Chappell, 198 Ga. 162, 30 S.E.2d 909 (1944).

36-2-2. Minimum requirements for districts.

Each militia district organized or changed must contain within its limits at least 200 persons 18 years of age or over who are residents at the time of the organization of the district and, in its formation, must not leave any older district with less than 200 such persons. (Orig. Code 1863, § 455; Code 1868, § 517; Code 1873, § 483; Code 1882, § 483; Civil Code 1895, § 332; Civil Code 1910, § 375; Code 1933, § 23-203; Ga. L. 1982, p. 825, § 1.)

Cross references. — Composition of unorganized militia of the state, § 38-2-3.

JUDICIAL DECISIONS

O.C.G.A. § 36-2-2 is mandatory. — Proceeding which seeks to create a new district, but leaves an old district with less than the required number of male persons subject to militia duty, is repugnant to this section. Johnson v. Chappell, 198 Ga. 162, 30 S.E.2d 909 (1944) (see O.C.G.A. § 36-2-2).

Order void when existing district left understrength. — Order, by the proper county authority, approving a report of the commissioners appointed to lay out and establish a new militia district, is void since, by the establishment of the new district, an existing district is left with less than the required number of persons liable to militia duty. Johnson v. Chappell, 198 Ga. 162, 30 S.E.2d 909 (1944).

OPINIONS OF THE ATTORNEY GENERAL

The 1982 amendment to O.C.G.A. § 36-2-2 does not require that any militia district boundaries be changed; any changes are to be initiated by the board of county commissioners in counties where the board is vested with this power by local law. 1982 Op. Att'y Gen. No. 82-94.

RESEARCH REFERENCES

ALR. — Enlistment or mustering of minors into military service, 140 ALR 1508.

36-2-3. Appointment of commissioners to change districts; employment and compensation of surveyor; approval of commissioners' report by judge of probate court.

Whenever it is necessary and expedient to lay out a new militia district, to change the lines of old districts, or to consolidate or abolish old districts, the judge of the probate court may, at any time, appoint three commissioners who are citizens of the district or districts from which it is proposed to make the new district or to change the lines thereof, whose duty it shall be to lay out and define the lines and to report the same to the judge of the probate court. The commissioners shall have authority to engage the services of a competent surveyor to assist them in their duties. The surveyor shall be paid for his services, out of the county treasury, the same compensation county surveyors are paid for similar services rendered to a citizen. If the judge of the probate court approves the report of the commissioners, he shall have all proceedings in the matter entered on his minutes, after which the district laid out or the line changed or defined shall be known and regarded accordingly. (Laws 1840, Cobb's 1851 Digest, p. 187; Code 1863, §§ 456, 457, 458; Code 1868, §§ 518, 519, 520; Code 1873, §§ 484, 485, 486; Code 1882, §§ 484, 485, 486; Civil Code 1895, §§ 333,

334, 335; Civil Code 1910, §§ 376, 377, 378; Code 1933, §§ 23-204, 23-205, 23-206.)

Cross references. — Compensation of county surveyors, § 36-7-9 et seq.

JUDICIAL DECISIONS

This section is a general law. Drummond v. Lowry, 88 Ga. 716, 16 S.E. 28 (1892); Hackney v. Leake, 91 Ga. 141, 16 S.E. 966 (1893) (see O.C.G.A. § 36-2-3).

Commissioners appointed by the ordinaries to lay out new militia districts, or change the lines of those existing, have authority to engage the services of a competent surveyor to assist the commissioners in the commissioners' duties. The commissioners are not limited to the county surveyor. Graham v. Hall, 68 Ga. 354 (1882).

Power of ordinary (now judge of the probate court) and time of action. — Ordinary (now judge of the probate court) may appoint the commissioners, receive the commissioners' reports, and establish new districts either in term or vacation. Poole v. Sims, 67 Ga. 36 (1881).

Ordinary (now judge of the probate court) determines expediency. — Commissioners are mere agents to lay off the lines of a new district; the ordinary (now judge of the probate court) determines the expediency of creating it. The creation of a new district is not, therefore, illegal because deemed inexpedient by the commissioners. Conley v. Poole, 67 Ga. 254 (1881).

Finality of decision. — Judge of a superior court has no jurisdiction to review by certiorari the action of an ordinary (now judge of the probate court) or board of commissioners for there is no decision of a judicial question between parties litigant. Hillsman v. Harris, 84 Ga. 432, 11 S.E. 400 (1890); Hudson v. Sullivan, 93 Ga. 631, 20 S.E. 77 (1894).

Decision to create district not subject to review. — Exercise of the discretion of the county authority in creating a militia district, in the absence of fraud or the willful abuse of discretion, could not be made the subject of review by the superior court or the Supreme Court. Johnson v. Chappell, 198 Ga. 162, 30 S.E.2d 909 (1944).

New district must not leave old district undermanned. — An order, by the proper county authority, approving a report of the commissioners appointed to lay out and establish a new militia district, is void since, by the establishment of the new district, an existing district is left with less than the required number of persons liable to militia duty. Johnson v. Chappell, 198 Ga. 162, 30 S.E.2d 909 (1944).

Proof of district lines and residence. — Change of district lines is a matter of record, but the location of a residence with reference thereto must be proved by parol evidence. Graham v. Hall, 68 Ga. 354 (1882).

Isolated tracts. — This section does not authorize the inclusion in a district of isolated tracts not contiguous thereto. Howell v. Kinney, 99 Ga. 544, 27 S.E. 204 (1896) (see O.C.G.A. § 36-2-3).

Justice of the peace (now magistrate) whose fees will be diminished by change in the militia district is not entitled to notice of proceedings. Poole v. Sims, 67 Ga. 36 (1881).

Form of petition and report. — Petition for a change of boundary line should distinctly specify the location of the new line, and the commissioners' report should lay out and define the new line. Howell v. Kinney, 99 Ga. 544, 27 S.E. 204 (1896).

OPINIONS OF THE ATTORNEY GENERAL

Judge may change district name. — Since the judge of the probate court has all of the powers specified in this section, which are quite extensive, then certainly

the judge has the power as implied by law to merely change the name of a militia district without changing the district's boundaries. 1963-65 Op. Att'y Gen. p. 339 (see O.C.G.A. § 36-2-3).

Commissioners of a county have authority to consolidate militia districts of that county into one militia district; the responsibility for changing the boundaries of, or consolidation of militia districts is that of the ordinary (now judge of the probate court) only when jurisdiction over such matters has not been granted by legislative act to the county commissioners. 1968 Op. Att'y Gen. No. 68-177.

Change in city limits is not one of means specified in the laws of Georgia for changing the boundaries of militia districts. 1968 Op. Att'y Gen. No. 68-237.

The 1982 amendment to O.C.G.A. § 36-2-2 does not require that any militia district boundaries be changed; any changes are to be initiated by the board of county commissioners in counties where the board is vested with this power by local law. 1982 Op. Att'y Gen. No. 82-94.

36-2-4. Transmittal of proceedings changing districts to Governor; publication.

It is the duty of the judge of the probate court, when a new district is laid out, immediately to transmit to the Governor the proceedings in the matter, duly certified, from his minutes and to publish them for 30 days at the door of the courthouse and in the newspaper where he does his official advertising. (Laws 1840, Cobb's 1851 Digest, p. 187; Code 1863, § 459; Code 1868, § 521; Code 1873, § 487; Code 1882, § 487; Civil Code 1895, § 336; Civil Code 1910, § 379; Code 1933, § 23-207.)

JUDICIAL DECISIONS

Numbers and names of militia districts are not required to be kept in executive department. Aultman v. Hodge, 150 Ga. 370, 104 S.E. 1 (1920).

36-2-5 through 36-2-7.

Reserved. Repealed by Ga. L. 1983, p. 884, § 4-2, effective July 1, 1983.

Editor's notes. — These Code sections, relating to effect on justices of the peace, constables, and actions pending in justice's court in the old district and election of justices of the peace and constables in new districts upon addition, consolidation, and abolition of militia districts, were based on Orig. Code 1863, §§ 460 to 462; Code 1868, §§ 522 to 524; Code 1873, §§ 488 to 490; Code 1882, §§ 488 to 490; Code 1895, §§ 337 to 339; Ga. L. 1899, p. 24, § 1; Civil Code 1910, §§ 380 to 382; Code 1933, §§ 23-208 to 23-210; and Ga. L. 1981, Ex. Sess., p. 8.

CHAPTER 3

COUNTY BOUNDARIES

Article 1

Change of Boundaries

Sec.
36-3-1. Filing and contents of petition for change of boundary line; publication of notice.
36-3-2. Proceedings before grand juries; action by county governing authorities upon approval of change by grand juries; publication of notice of approval by judges of probate courts.
36-3-3. When new boundary lines deemed established.
36-3-4. Payment of costs of proceedings.
36-3-5. Filing of survey, plat, and resolution relating to change of boundary with Secretary of State; disposition thereof; recordation of certified copy by clerks of superior courts.

Article 2

Settlement of Boundary Disputes

36-3-20. Presentment of boundary dispute by grand jury; certification to Governor; appointment of surveyor to define line; return of survey and plat to Secretary of State.
36-3-21. Service of notice of survey upon county authorities.
36-3-21.1. Counties' agreement to boundary lines; filing of resolutions.
36-3-22. Copy of survey and plat furnished to county authorities.
36-3-23. Filing of survey and plat with Secretary of State; time for protest or exceptions thereto.
36-3-24. Notice and hearing of protest or exceptions by Secretary of State.
36-3-25. Recordation of survey and plat; conclusive effect; subsequent changes of boundary line.
36-3-26. Compensation of land surveyor; notification of county authorities of fee; advisory committee.
36-3-27. Payment by county authorities of compensation; tax levy.

Cross references. — County boundaries generally, Vol. 42, Index of Local and Special Laws.

JUDICIAL DECISIONS

Presumption of compliance with statute. — An order of the Governor appointing a surveyor to make a survey and plat of a disputed county line will be presumed, until the contrary appears, to have been made in full compliance with statutes providing for settlement of disputed county line. Fine v. Dade County, 198 Ga. 655, 32 S.E.2d 246 (1944).

When lands sought to be taxed by one county become part of another county, this status remains until there is another survey of line, after which the lands became a part of the former county. Kennedy v. Howard, 183 Ga. 410, 188 S.E. 673 (1936).

Cited in Calhoun County v. Early County, 205 Ga. 169, 52 S.E.2d 854 (1949).

ARTICLE 1

CHANGE OF BOUNDARIES

Cross references. — Limitation of number of counties to 159, Ga. Const. 1983, Art. IX, Sec. I, Para. II(a). Changing of county lines by operation of general law only and consolidation, merger, or division of counties generally, Ga. Const. 1983, Art. IX, Sec. I, Para. II(b) and (c). Change in boundaries of election districts within counties, § 21-2-261 et seq. County boundaries generally, Vol. 42, Index of Local and Special Laws.

36-3-1. Filing and contents of petition for change of boundary line; publication of notice.

Whenever one or more citizens of any county desire to have the boundary line of the county changed, they shall file in the offices of the judges of the probate courts of the counties to be affected a petition in writing, setting forth the exact character of the change desired to be made, specifying particularly the situation, direction, and existing marks and monuments, if any, of the original line, and describing particularly the direction, location, and length of the proposed new line, and setting forth the reasons for the change. The person or persons applying for the change shall also give notice of the intention to apply for the change by publishing the same for at least 30 days next preceding the term of the superior court or courts to be held in the counties to be affected, which term shall be that next occurring after the filing of the petition with the judges of the probate courts:

(1) By publishing the notice in a public newspaper having general circulation in each of the counties to be affected by the change; and

(2) By posting the notice at the door of the courthouse in each of the counties and at three public places in every militia district adjacent to the line to be changed. (Ga. L. 1880-81, p. 52, § 1; Code 1882, § 508n; Civil Code 1895, § 382; Civil Code 1910, § 468; Code 1933, § 23-301.)

Law reviews. — For article questioning the constitutionality of this section and the constitutional provision under which it was enacted, see 10 Ga. L. Rev. 169 (1975).

JUDICIAL DECISIONS

Constitutionality. — This and the following sections of this chapter constitute a general law and are not unconstitutional. Aultman v. Hodge, 147 Ga. 626, 95 S.E. 297 (1918) (see O.C.G.A. § 36-3-1 and O.C.G.A. Ch. 3, T. 36).

Quantity of land transferred limited by discretion of officials. — When provisions of law have been fully complied with, the quantity of land that may be transferred from one county to another by a change of county line is limited only by the restrictions contained in law; that is, by discretion of those officials named, and by the constitutional provision against removal of county site, or dissolution of a

county except in the manner prescribed in Ga. Const. 1976, Art. IX, Sec. I, Para. V (see Ga. Const. 1983, Art. IX, Sec. I, Para. II). Aultman v. Hodge, 147 Ga. 626, 95 S.E. 297 (1918).

Injunction in discretion of judge. — On a petition to enjoin commissioners from passing on recommendation of grand jury sanctioning change of county line, the judge of the superior court did not abuse judicial discretion in refusing an interlocutory injunction on the facts of the case. Aultman v. Hodge, 147 Ga. 626, 95 S.E. 297 (1918).

Notice not required to be posted throughout length of county line. — Provision in this section as to the posting of notice in militia districts does not require the posting of notice in every district throughout the length of the county line unless the line is to be changed throughout the line's entire length. Aultman v. Hodge, 147 Ga. 626, 95 S.E. 297 (1918) (see O.C.G.A. § 36-3-1).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 42, 51, 52, 56, 59, 60.

ALR. — What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 ALR4th 822.

36-3-2. Proceedings before grand juries; action by county governing authorities upon approval of change by grand juries; publication of notice of approval by judges of probate courts.

It shall be the duty of the judges of the probate courts of the counties whose dividing line is sought to be changed to lay before the grand juries of their respective counties, on the first day of the next term of the superior courts after the publication of the notice and the filing of the petition provided for in Code Section 36-3-1, the original petition, together with all maps, plats, and other papers that may have been filed therewith. If such grand juries, by a two-thirds' vote of their respective bodies, approve the change applied for, they shall so declare in their general presentments. This action of the grand juries shall be certified at once by the clerks of the superior courts to the county governing authority in the counties to be affected, who shall, within 30 days from the date of the certification, approve or disapprove the application and certify their action to the judges of the probate courts of their respective counties. When the judges of the probate courts have satisfactory evidence of the concurrent approval of the grand juries and of the county governing authority in the counties to be affected, they shall cause an official notice of concurrent approval and a description of the line approved to be published for at least 30 days in a public newspaper having general circulation in their respective counties. (Ga. L. 1880-81, p. 52, § 2; Code 1882, § 508o; Civil Code 1895, § 383; Civil Code 1910, § 469; Code 1933, § 23-302.)

Cross references. — Grand juries, T. 15, C. 12, A. 4.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 26 et seq.

36-3-3. When new boundary lines deemed established.

When all the proceedings have been had in the manner prescribed in Code Sections 36-3-1 and 36-3-2 and when the same have been fairly recorded by the judges of the probate courts on the minutes of their respective courts, the new line or lines shall be held to have been established in lieu of the original line or lines. (Ga. L. 1880-81, p. 52, § 3; Code 1882, § 508r; Civil Code 1895, § 384; Civil Code 1910, § 470; Code 1933, § 23-303.)

Cross references. — Rerecording of deeds, mortgages, or other papers to land affected by change in county boundaries, § 44-2-13.

JUDICIAL DECISIONS

Sovereign immunity not waived. — In an action arising out of an arrest, despite the way the arrestee was treated, the trial court properly dismissed a complaint against a county, and granted summary judgment on the same complaint against a city, on sovereign immunity grounds and because the arrestee failed to show that the immunity had been waived. Scott v. City of Valdosta, 280 Ga. App. 481, 634 S.E.2d 472 (2006).

36-3-4. Payment of costs of proceedings.

The entire costs of advertising and recording the petition, descriptions, and all other papers and proceedings relating to the proposed change in the boundary line of a county shall be paid by the person or persons applying therefor. (Ga. L. 1880-81, p. 52, § 4; Code 1882, § 508s; Civil Code 1895, § 385; Civil Code 1910, § 471; Code 1933, § 23-304; Ga. L. 1982, p. 3, § 36.)

36-3-5. Filing of survey, plat, and resolution relating to change of boundary with Secretary of State; disposition thereof; recordation of certified copy by clerks of superior courts.

When all proceedings have transpired pursuant to this article, three copies of the survey and plat evidencing a change in county lines and a copy of a resolution from the governing authority of each county evidencing approval of the change shall be filed jointly by the judge of the probate court of each county with the Secretary of State. Upon

receipt of the copies of the survey and plat and the resolutions provided above, the Secretary of State shall certify the survey and plat and send a certified copy thereof to the clerk of the superior court of each county affected by the change in county lines. The clerk of the superior court shall record the survey and plat in the same book in which other plats of the county are recorded. The Secretary of State shall retain one copy of the survey and plat, such copy of the survey and plat to be filed in his office. (Code 1933, § 23-305, enacted by Ga. L. 1975, p. 394, § 1.)

Cross references. — Rerecording of deeds, mortgages, or other papers to land affected by change in county boundaries, § 44-2-13.

ARTICLE 2

SETTLEMENT OF BOUNDARY DISPUTES

36-3-20. Presentment of boundary dispute by grand jury; certification to Governor; appointment of surveyor to define line; return of survey and plat to Secretary of State.

When the boundary line between two or more counties is in dispute and the grand jury of either county presents that the boundary line needs to be marked out and defined, it shall be the duty of the clerk of the superior court in the county where the presentments were made to certify the presentments to the Governor. The Governor shall appoint some suitable and competent land surveyor, who shall not reside in either county, to survey, mark out, and define the boundary line in dispute and to return the survey with plat to the Secretary of State's office to be recorded in a book to be kept for that purpose. (Ga. L. 1887, p. 106, § 1; Civil Code 1895, § 386; Civil Code 1910, § 472; Code 1933, § 23-401; Ga. L. 1977, p. 248, § 1.)

JUDICIAL DECISIONS

This section and the following section do not contemplate actions between counties, but the statutes devise a process by which the line as originally fixed by the legislature in the formation of the counties shall be ascertained and made certain. Early County v. Baker County, 137 Ga. 126, 72 S.E. 905 (1911) (see O.C.G.A. § 36-3-20 and O.C.G.A. Ch. 3, T. 36).

Availability of mandamus. — Mandamus will issue to compel ordinary (now judge of the probate court) to comply with the Act of 1879. Dickson v. Hill, 75 Ga. 369 (1885).

Line located contrary to prior judgment does not nullify judgment. — When the public authorities in locating line under this and the following sections located the line so that the line included land between lines contended for by parties to the litigation in which a judgment had been rendered, this did not nullify the prior judgment fixing the boundary line between the parties. Caverly v. Stovall, 143 Ga. 705, 85 S.E. 844 (1915).

Cited in Fine v. Dade County, 198 Ga. 655, 32 S.E.2d 246 (1944).

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Boundaries, § 46 et seq.

C.J.S. — 20 C.J.S., Counties, § 26 et seq.

ALR. — Right of political division to challenge acts or proceedings by which its boundaries or limits are affected, 86 ALR 1367.

36-3-21. Service of notice of survey upon county authorities.

Before the land surveyor proceeds to make the survey, he shall give the authorities having charge of the revenues of the counties at least ten days' notice of the time and place intended to commence the survey. The notice shall be given by mail or in person. (Ga. L. 1887, p. 106, § 5; Civil Code 1895, § 390; Civil Code 1910, § 479; Code 1933, § 23-402; Ga. L. 1977, p. 248, § 2.)

JUDICIAL DECISIONS

Cited in Fine v. Dade County, 198 Ga. 655, 32 S.E.2d 246 (1944).

36-3-21.1. Counties' agreement to boundary lines; filing of resolutions.

(a) At any time after certification of the grand jury presentment to the Governor and prior to a final determination by the Secretary of State under Code Section 36-3-24, the governing authorities of the affected counties may by mutual agreement determine where the boundary line shall be located. Any such agreement shall be evidenced by the adoption of an appropriate concurrent unanimous resolution by the governing authority of each affected county; and each such resolution shall incorporate or incorporate by reference an agreed upon plat, description, or other means of definitely ascertaining the boundary line.

(b) The resolutions of the affected counties shall be filed with the Secretary of State and the Department of Community Affairs, together with the agreed upon plat, description, or other means of definitely ascertaining the county line. If the Secretary of State finds that:

(1) Such resolutions meet the requirements of this Code section;

(2) The agreed upon plat, description, or other means adequately defines the boundary line;

(3) The surveyor, if appointed, has been adequately compensated for services performed to date or adequate arrangements have been made for the payment of such compensation; and

(4) The agreement is otherwise proper to terminate the boundary dispute,

then the Secretary of State may enter a written determination that the disputed boundary line has been determined by agreement as authorized by this Code section. Such written determination, the concurrent resolutions of the affected counties, and the plat, description or other means of definitely ascertaining the boundary line shall be recorded in the same manner and with the same effect provided for in Code Section 36-3-25. (Code 1981, § 36-3-21.1, enacted by Ga. L. 2002, p. 1292, § 1.)

36-3-22. Copy of survey and plat furnished to county authorities.

The land surveyor appointed by the Governor to survey, mark out, and define the boundary line in dispute shall furnish the judges of the probate courts or chairmen of the boards of county commissioners of the respective counties with a copy of the survey and plat made and returned by him to the Secretary of State, at the same time the survey and plat are made and returned to the Secretary of State. (Ga. L. 1899, p. 24, § 1; Civil Code 1910, § 473; Code 1933, § 23-403; Ga. L. 1977, p. 248, § 3.)

JUDICIAL DECISIONS

Constitutionality. — Former Civil Code 1910, §§ 473-475 (see O.C.G.A. §§ 36-3-22 — 36-3-24) were not violative of Ga. Const. 1976, Art. I, Sec. II, Para. IV (see Ga. Const. 1983, Art. I, Sec. II, Para. III) as an attempt to confer judicial power upon the Secretary of State. Early County v. Baker County, 137 Ga. 126, 72 S.E. 905 (1911), aff'd, 10 Ga. App. 305, 73 S.E. 352 (1912).

Cited in Fine v. Dade County, 198 Ga. 655, 32 S.E.2d 246 (1944).

36-3-23. Filing of survey and plat with Secretary of State; time for protest or exceptions thereto.

The survey with plat, made and returned to the Secretary of State, shall be filed in his office, and entry of filing shall be made thereon; but the survey and plat shall not be recorded within the space of 30 days from the date of its reception in such office, for the purpose of allowing the authorities of either county dissatisfied therewith to file a protest or exceptions thereto within that time. (Ga. L. 1899, p. 24, § 2; Civil Code 1910, § 474; Code 1933, § 23-404.)

JUDICIAL DECISIONS

Constitutionality. — Former Civil Code 1910, §§ 473-475 (see O.C.G.A. §§ 36-3-22 — 36-3-24) were not violative of Ga. Const. 1976, Art. I, Sec. II, Para. IV (see Ga. Const. 1983, Art. I, Sec. II, Para. III) as an attempt to confer judicial power upon the Secretary of State. Early County v. Baker County, 137 Ga. 126, 72 S.E. 905 (1911), 10 Ga. App. 305, 73 S.E. 352 (1912).

Cited in Fine v. Dade County, 198 Ga. 655, 32 S.E.2d 246 (1944).

36-3-24. Notice and hearing of protest or exceptions by Secretary of State.

If a protest or exceptions to the survey and plat are filed in the Secretary of State's office within the 30 days, it shall be the duty of the Secretary of State to give, through the mail, ten days' written notice of the time when he will hear the protest or exceptions at his office to the county governing authorities of the respective counties. Upon the hearing, the Secretary of State shall determine from the law and evidence the true boundary line in dispute between the respective counties. (Ga. L. 1899, p. 24, § 3; Civil Code 1910, § 475; Code 1933, § 23-405.)

JUDICIAL DECISIONS

Constitutionality. — Former Civil Code 1910, §§ 473-475 (see O.C.G.A. §§ 36-3-22 — 36-3-24) were not violative of Ga. Const. 1976, Art. I, Sec. II, Para. IV (see Ga. Const. 1983, Art. I, Sec. II, Para. III) as an attempt to confer judicial power upon the Secretary of State. Early County v. Baker County, 137 Ga. 126, 72 S.E. 905 (1911), 10 Ga. App. 305, 73 S.E. 352 (1912).

Cited in Fine v. Dade County, 198 Ga. 655, 32 S.E.2d 246 (1944).

36-3-25. Recordation of survey and plat; conclusive effect; subsequent changes of boundary line.

Upon the making of a decision by the Secretary of State pursuant to Code Section 36-3-24 or in case no protest or exceptions are filed within the 30 days, the Secretary of State shall cause the survey and plat to be recorded in a book to be kept for that purpose, whereupon the same shall be final and conclusive as to the boundary line in dispute. When the boundary line in dispute has been established as final and conclusive as provided in this Code section, the same boundary line shall not again be subject to the procedures set forth in this article, and such boundary line may subsequently be changed only in accordance with Article 1 of this chapter, provided that nothing contained in this sentence shall affect any boundary line dispute in question on July 1, 1980, until the dispute is settled. (Ga. L. 1899, p. 24, § 4; Civil Code 1910, § 476; Code 1933, § 23-406; Ga. L. 1980, p. 1178, § 1; Ga. L. 1982, p. 3, § 36.)

Editor's notes. — Ga. L. 1980, p. 1178, § 2, not codified by the General Assembly, provided that nothing in that Act, which added the last two sentences to this Code section, shall affect any boundary line disputes already in question, until such disputes are settled.

JUDICIAL DECISIONS

Cited in Fine v. Dade County, 198 Ga. 655, 32 S.E.2d 246 (1944).

36-3-26. Compensation of land surveyor; notification of county authorities of fee; advisory committee.

(a) The land surveyor shall receive a fee to be fixed by the Secretary of State or his designated deputy or assistant. Such fee shall be based upon reasonable compensation for the work to be performed and the rates normally charged by land surveyors in the same geographical area as the disputed line. The fee shall be negotiated prior to the commencement of the survey. Prior to the commencement of the survey, it shall be the duty of the Secretary of State to notify the governing authorities of the counties affected of the fee which has been negotiated.

(b) For the purpose of assisting the Secretary of State in connection with his responsibilities and duties to fix and negotiate an appropriate fee for the services of the land surveyor in surveying, marking out, and defining the boundary line in dispute, the Secretary of State may appoint an advisory committee to be composed of three registered land surveyors. One of the members of the advisory committee shall be a county surveyor who shall be selected by the Secretary of State from a list of at least three county surveyors submitted to the Secretary of State by the Association County Commissioners of Georgia. The members of the advisory committee shall serve at the pleasure of the Secretary of State or for such terms as the Secretary of State shall provide. The members of the advisory committee shall receive no compensation for their services as such.

(c) The advisory committee shall review the proposals of the land surveyor appointed by the Governor and shall counsel and advise the Secretary of State as to the committee's recommendation concerning an appropriate fee for such services. The recommendations of the advisory committee to the Secretary of State in relation to such fee shall not be binding upon the Secretary of State but shall be used by the Secretary of State in assisting him in determining and fixing an appropriate fee. (Ga. L. 1887, p. 106, § 3; Civil Code 1895, § 388; Civil Code 1910, § 477; Code 1933, § 23-407; Ga. L. 1956, p. 192, § 1; Ga. L. 1958, p. 633, § 1; Ga. L. 1977, p. 248, § 4; Ga. L. 1980, p. 1280, § 1.)

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 26 et seq.

36-3-27. Payment by county authorities of compensation; tax levy.

It shall be the duty of the governing authorities of each of the counties affected by such survey to pay that proportion of the fee established under Code Section 36-3-26 that such county bears to the total number of counties directly affected by the survey. The payment of such fees is declared to be a public purpose. The governing authority of each county affected is authorized and directed to pay such fees and to levy such taxes as may be necessary for the payment of such fees. (Ga. L. 1887, p. 106, § 4; Civil Code 1895, § 389; Civil Code 1910, § 478; Code 1933, § 23-408; Ga. L. 1977, p. 248, § 5.)

JUDICIAL DECISIONS

When county not liable for surveyor's expenses. — When suit was brought by a surveyor, who was appointed by the Governor to run a disputed line between two counties under former Civil Code 1910, § 478 and former Civil Code 1910, § 473 et seq. (see O.C.G.A. §§ 36-3-27 and 36-3-22 et seq.), to recover from one of such counties one-half of the charge, there was no error in dismissing the suit on general demurrer (now motion to dismiss) because there was no valid law authorizing a county to levy taxes to meet such a claim, and a county is not liable for suit thereon. Robert v. Wilkinson County, 137 Ga. 601, 73 S.E. 838 (1912); Smith v. Baker County, 142 Ga. 168, 82 S.E. 557 (1914).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 36-3-27 requires that each governing authority pay each pro rata share of the survey fee and forbids contrary agreements. 1981 Op. Att'y Gen. No. 81-41.

CHAPTER 4

CHANGE OR REMOVAL OF COUNTY SITE

Sec.		Sec.	
36-4-1.	Petition for removal or change of county site; order of election; notice of election; qualifications of voters; frequency of elections.	36-4-4.	Certificate of Secretary of State as evidence of election and number of votes.
36-4-2.	Conduct of election generally; returns.	36-4-5.	Where courts to be held after removal; validity of proceedings.
36-4-3.	Form and marking of ballots; number of votes required to authorize removal.	36-4-6.	Where offices to be kept after removal.

Cross references. — Limitation of number of counties, Ga. Const. 1983, Art. IX, Sec. I, Para. II.

36-4-1. Petition for removal or change of county site; order of election; notice of election; qualifications of voters; frequency of elections.

Whenever two-fifths of the electors of any county who are qualified to vote for members of the General Assembly, as shown by the registration list last made out, shall petition the judge of the probate court for the removal or change of the county site of the county, the judge of the probate court shall at once grant an order directing an election to be held at the various election precincts in the county not less than 40 nor more than 60 days thereafter. The petition shall state where the new county site is to be located. Notice of the election shall be published weekly for four weeks previous to the day of the election in the newspaper in which the sheriff publishes his legal notices. All persons qualified to vote for members of the General Assembly shall be qualified to vote at the election. Elections under this Code section shall not occur more often than once in five years. (Ga. L. 1878-79, p. 44, § 1; Code 1882, § 508x; Ga. L. 1887, p. 39, § 1; Civil Code 1895, § 391; Civil Code 1910, § 486; Ga. L. 1911, p. 54, § 1; Code 1933, § 23-501.)

JUDICIAL DECISIONS

Constitutionality. — Former Code 1895, § 391 et seq. (see O.C.G.A. § 36-4-1 et seq.) did not fall because of conflict with the Constitution as to the number of votes required to remove or change the county site. The sole purpose of these sections was to provide machinery to carry out the constitutional provision relative to a change of county sites by providing an election by striking out the requirements as to the number of votes, which was already fixed by the Constitution; these

sections remain complete in themselves and capable of being carried out in accordance with the legislative intent. Lee v. Tucker, 130 Ga. 43, 60 S.E. 164 (1908) (decided prior to revision of section by Ga. L. 1911, p. 54, § 1).

General Assembly not bound by findings of Secretary of State. — General Assembly, in determining the facts and legislating upon the removal of county sites under former Civil Code 1910, § 486 et seq. (see O.C.G.A. § 36-4-1 et seq.), is not bound by the findings of the Secretary of State as to the result of the election. Bachlott v. Buie, 158 Ga. 705, 124 S.E. 339 (1924); Cowart v. Manry, 166 Ga. 612, 144 S.E. 21 (1928).

Failure of General Assembly to legislate. — When the removal election was held on May 5, 1927, and the General Assembly of 1927 did not pass any legislation thereon, the General Assembly of 1929 had the constitutional power and authority to pass an Act removing the county site. Cowart v. Manry, 166 Ga. 612, 144 S.E. 21 (1928).

Act for removal of county seat does not impair obligation of contract. — Act for the removal of the county seat does not impair the obligation of contract. In such matters one legislature had not the right to bind all subsequent legislatures. Hamrick v. Rouse, 17 Ga. 56 (1855) (decided prior to revision of section by Ga. L. 1911, p. 54, § 1).

Duty of ordinary (now judge of the probate court). — Under the provisions of this section, the power to call an election to determine whether in a given county there shall be a change of the location of the county site is vested in the ordinary (now judge of the probate court) and even if the General Assembly had power in a given case to so change this general law as to vest this power in another official, the Act approved December 8, 1886, creating a Board of Commissioners of Roads and Revenues for the County of DeKalb, neither vested nor sought to vest such power in the board of commissioners created by it. Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165 (1897) (decided prior to revision of section by Ga. L. 1911, p. 54, § 1).

If, in order to find that the petition contains the requisite two-fifths, it is necessary for the ordinary (now judge of the probate court) to act upon extraneous evidence, explaining that names on the petition and the digest list, though different, in fact refer to the same persons, and that certain names on the digest list are of deceased persons and persons removed from the county, then there is no absolute duty to call the election. After refusal by the ordinary (now judge of the probate court) mandamus will not lie to compel the ordinary (now judge of the probate court) to act. Barrett v. Ashmore, 137 Ga. 545, 73 S.E. 825 (1912) (decided prior to revision of section by Ga. L. 1911, p. 54, § 1).

Order shall not specify particular place of removal. — Petition for the election should be for an election for the removal of the county site, and the order calling the election should show that it is one for the removal of the actual county site, without specifying a particular place to which it shall be removed, so as to leave to the qualified voters free choice between the place where the county site is actually located and any other place in the county. Cheney v. Ragan, 151 Ga. 735, 108 S.E. 30 (1921).

Provision as to five-year period not binding on subsequent legislature. — Provision relating to the removal of a county seat not oftener than once every five years is not binding on a subsequent legislature and a subsequent legislature would be authorized under the Constitution to pass an Act removing a county site, although the election upon which the Act was based was held within less than five years from a previous election held for that purpose. Orr v. James, 159 Ga. 237, 125 S.E. 468 (1924).

Calling election prima-facie proof of proper petition. — Calling of the election by the ordinary (now judge of the probate court) determined at least prima facie that the petitioners were of the class and were of a sufficient number as required by the statute for the purpose of calling an election at which the question of the removal of the county site to a named town within the county should be voted upon. Vornberg v. Dunn, 143 Ga. 111, 84 S.E. 370 (1915).

Direction of the petition to "ordinary" (now judge of the probate court) instead of "court of ordinary" will not render the petition void. Vornberg v. Dunn, 143 Ga. 111, 84 S.E. 370 (1915).

Cited in Lee v. Tucker, 130 Ga. 43, 60 S.E. 164 (1908).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 90 et seq.

36-4-2. Conduct of election generally; returns.

The election shall be held and conducted and returns shall be made thereof as is provided by Chapter 2 of Title 21, the "Georgia Election Code." (Ga. L. 1878-79, p. 44, § 2; Code 1882, § 508y; Civil Code 1895, § 392; Civil Code 1910, § 487; Code 1933, § 23-502.)

JUDICIAL DECISIONS

Where polls opened. — To the validity of an election it is not indispensable that the polls should be opened at each of the polling places in the county. Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165 (1897).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 31.

C.J.S. — 20 C.J.S., Counties, § 97 et seq.

36-4-3. Form and marking of ballots; number of votes required to authorize removal.

At the election, the form of the ballot and the procedure for marking the ballot shall be as provided in Chapter 2 of Title 21, the "Georgia Election Code." The ballot for such election shall have written or printed thereon the following:

"[ ] YES Shall the county site of _____ County

[ ] NO be moved to _____?"

In any such referendum election, all persons desiring to vote in favor of moving the county site shall vote "Yes," and those persons desiring to vote against moving the county site shall vote "No." If two-thirds of the votes cast at the election are in favor of removal, the General Assembly next convening after the election may provide for the removal of the county site by appropriate legislation. (Ga. L. 1878-79, p. 44, § 3; Code 1882, § 508z; Civil Code 1895, § 393; Civil Code 1910, § 488; Code 1933, § 23-503; Ga. L. 1987, p. 3, § 36.)

History of Code section. — The language of this Code section is derived in part from the decision in Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165 (1897).

JUDICIAL DECISIONS

Voter must designate place preferred. — It is necessary not only that the voter voting for the removal of the county site should state upon the ballot "for removal," but also that the voter should designate thereon the particular place to which the voter desires the county seat removed. Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165 (1897); Cheney v. Ragan, 151 Ga. 735, 108 S.E. 30 (1921).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 97 et seq.

36-4-4. Certificate of Secretary of State as evidence of election and number of votes.

The certificate of the Secretary of State showing that the election was held and that two-thirds of the qualified voters voting at the election voted in favor of removal shall be sufficient evidence of the holding of the election and of the number of votes cast. (Ga. L. 1878-79, p. 44, § 4; Code 1882, § 508aa; Civil Code 1895, § 394; Civil Code 1910, § 489; Ga. L. 1911, p. 54, § 1; Code 1933, § 23-504.)

History of Code section. — The language of this Code section is derived in part from the decision in Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165 (1897).

JUDICIAL DECISIONS

Legislature not confined to secretary's certificate. — Legislature is not precluded from ascertaining by other appropriate means the facts concerning the election and the number of votes cast. Cutcher v. Crawford, 105 Ga. 180, 31 S.E. 139 (1898); Lee v. Tucker, 130 Ga. 43, 60 S.E. 164 (1908) (decided prior to revision of section by Ga. L. 1911, p. 54, § 1); Bachlott v. Buie, 158 Ga. 705, 124 S.E. 339 (1924).

Act of General Assembly which removes a county site is not unconstitutional and void because it was passed contrary to finding of Secretary of State. Cutcher v. Crawford, 105 Ga. 180, 31 S.E. 139 (1898); Lee v. Tucker, 130 Ga. 43, 60 S.E. 164 (1908) (decided prior to revision of section by Ga. L. 1911, p. 54, § 1); Vornberg v. Dunn, 143 Ga. 111, 84 S.E. 370 (1915); Bachlott v. Buie, 158 Ga. 705, 124 S.E. 337 (1924).

Injunction when legislature has not considered result. — An injunction will issue restraining the ordinary (now judge of the probate court) from erecting a new courthouse at the site of the old one after an election has been had to change the site, if the legislature had not considered the result. Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165 (1897) (decided prior to revision of section by Ga. L. 1911, p. 54, § 1).

Copy of election returns not admissible in evidence. — Certified copy from the office of the Secretary of State of the consolidated return of an election held in a given county upon the question of removing the county site thereof is not admissible in evidence for the purpose of showing that the General Assembly, in acting upon a bill providing for such removal, did not have before the General Assembly legal evidence showing that such an election had been held and that two-thirds of the

qualified voters thereat voted in favor of a removal of the county site to a particular place. Cutcher v. Crawford, 105 Ga. 180, 31 S.E. 139 (1898) (decided prior to revision of section by Ga. L. 1911, p. 54, § 1).

Admissions in pleadings binding. — An admission made in the pleadings that certain of the voters voting at such election voted in favor of the removal of the county site to a particular place, so long as the admission stands as part of the pleading, is binding upon the party making the admission. Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165 (1897) (decided prior to revision of section by Ga. L. 1911, p. 54, § 1).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Elections, §§ 287, 288.

36-4-5. Where courts to be held after removal; validity of proceedings.

After a county site is removed as provided by law, all the courts which are required by law to be held at the county site of the county, by proper orders made by the judges of such courts at chambers or in regular session and entered on the minutes of the courts, shall continue to be held in the old buildings at the former county site until the new buildings at the county site are ready for occupancy. All the proceedings of any court so held shall be legal. (Ga. L. 1905, p. 104, § 1; Civil Code 1910, § 502; Code 1933, § 23-517.)

JUDICIAL DECISIONS

Cited in Jackson v. State, 31 Ga. App. 188, 120 S.E. 129 (1923).

36-4-6. Where offices to be kept after removal.

The authorities having charge of county affairs in any county for which the county site has been removed shall provide by an order entered on their minutes that the county officers of the county shall have and keep their offices in such buildings at either the old or new county site as, in the judgment of the county authorities, may be best, until the new buildings are ready for occupancy. (Ga. L. 1905, p. 104, § 2; Civil Code 1910, § 503; Code 1933, § 23-518.)

OPINIONS OF THE ATTORNEY GENERAL

It is not proper for county tax commissioner to store tax records in the commissioner's home. 1975 Op. Att'y Gen. No. U75-75.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 76.

CHAPTER 5

ORGANIZATION OF COUNTY GOVERNMENT

Article 1

Sec.
36-5-1. [Reserved].

Article 2

County Governing Authorities

36-5-20. Official names of county governing authorities.
36-5-21. Vacancy in office of county commissioner or other governing authority.
36-5-22. County manager authorized.
36-5-22.1. Powers and duties; delegation.
36-5-23. Salary of county commissioner in counties having population of not less than 56,400 or more than 60,000 [Repealed].
36-5-24. Definitions; compensation of members of county governing authorities.
36-5-25. Salary of county commissioner in county administered by single commissioner.
36-5-26. Authorization for service of process.
36-5-27. Compensation supplement with designation as a certified county commissioner.
36-5-28. Members of county governing authority to receive compensation increase when classified service employees receive increase; calculation; effective date.
36-5-29. Pay increases for certain members of county governing authorities.

Law reviews. — For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

ARTICLE 1

Editor's notes. — Ga. L. 1987, p. 1482, § 5, effective April 17, 1987, repealed the Code sections formerly codified at this article. The former article, which was entitled "Government by Judge of the Probate Court," consisted of §§ 36-5-1 through 36-5-8 and was based on Orig. Code 1863, §§ 286, 287, 4028 through 4031, 4034; Code 1868, §§ 346, 347, 4058 through 4061, 4064; Code 1873, §§ 337, 338, 4123 through 4126, 4129; Ga. L. 1877, p. 109, § 1; Code 1882, §§ 337, 338, 741a, 4123 through 4126, 4129; Civil Code 1895, §§ 4238 through 4240, 4263 through 4266, 4268; Civil Code 1910, §§ 4796 through 4798, 4821 through 4824, 4826; Code 1933, §§ 23-701 through 23-708; Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1982, p. 3, § 36.

36-5-1.

Reserved.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, the designation of this Code Section was reserved.

ARTICLE 2

COUNTY GOVERNING AUTHORITIES

JUDICIAL DECISIONS

Cited in McCracken v. Gainesville Tribune, Inc., 146 Ga. App. 274, 246 S.E.2d 360 (1978).

36-5-20. Official names of county governing authorities.

The words "Roads and Revenues" are stricken from the official names of all of the governing authorities of the counties of this state, so that the official names of the governing authorities of the counties will be changed from "Board of Commissioners of Roads and Revenues of _____ County" and from the "Commissioner of Roads and Revenue of _____ County" to "Board of Commissioners of _____ County" and "Commissioner of _____ County," respectively. (Ga. L. 1968, p. 1141, § 1; Ga. L. 1982, p. 3, § 36.)

Cross references. — "County governing authority" defined, § 1-3-3(7).

36-5-21. Vacancy in office of county commissioner or other governing authority.

(a) When a vacancy occurs in the office of a county governing authority in any county in which the local Act creating that governing authority for the county makes no provision for succession to fill the vacancy and the unexpired term of office exceeds six months in duration, it shall be the duty of the judge of the probate court of the county to call a special election to elect a successor and fill the vacancy in not less than 30 nor more than 60 days. The election shall be held as provided by Chapter 2 of Title 21, the "Georgia Election Code," and the cost of the election shall be defrayed by the proper county authorities. If the unexpired term to be filled is less than six months in duration and the local Act creating the governing authority makes no provision to fill the vacancy, the judge of the superior court of the county shall have the power to appoint a successor to fill the unexpired term.

(b) Unless otherwise provided by local law, when the office of any county commissioner is vacated for any reason and a special election is required to be called pursuant to subsection (a) of this Code section, the remaining members of the board of commissioners shall constitute the governing authority of the county during the interim period between the creation of the vacancy and the election and qualification of a successor to fill the vacancy pursuant to subsection (a) of this Code

section, except that if as a result of that vacancy or any combination of such vacancies there is no longer any commissioner remaining in office to constitute the county governing authority, the judge of the probate court of the county shall serve as the county governing authority until the election and qualification under subsection (a) of this Code section of all successors to the vacated positions on the county governing authority.

(c) A judge of the probate court serving as the county governing authority pursuant to subsection (b) of this Code section shall receive for such service, in addition to any other compensation that judge is authorized by law to receive, an amount equal to the amount the chairman of the board of commissioners or the sole commissioner, as applicable, would have been authorized to receive for that period of service. (Ga. L. 1898, p. 93, § 1; Civil Code 1910, § 627; Code 1933, § 23-801; Ga. L. 1947, p. 173, § 1; Ga. L. 1986, p. 328, § 1; Ga. L. 1987, p. 1482, § 6.)

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Duty arises instantly upon occurrence of vacancy. Newton v. Stembridge, 212 Ga. 828, 96 S.E.2d 504 (1957).

Cited in Stembridge v. Newton, 213 Ga. 304, 99 S.E.2d 133 (1957).

OPINIONS OF THE ATTORNEY GENERAL

Filling vacancy in public office. — Vacancy in the office of tax collector is filled by temporary appointment by the ordinary (now county governing authority) until a special election to fill the vacancy is held and such special election may be held on the same day as the general election. 1945-47 Op. Att'y Gen. p. 83.

Special Act controls. — If a county has a special Act which varies this section, the county must follow the procedure there set forth. 1974 Op. Att'y Gen. No. U74-22 (see O.C.G.A. § 36-5-21).

Special elections. — O.C.G.A. § 36-5-21 is by its very term not applicable if the local act creating the governing authority for the county provides for the manner of succession to fill a vacancy. 1990 Op. Att'y Gen. No. U90-9.

When the local law creating the board of commissioners for Houston County, as amended, provides that, with regard to vacancies occurring more than one year prior to the expiration of the term of office, the vacancy "shall be filled by a special election called by the election superintendent of Houston County in the same manner as in the case to fill vacancies in other county offices ...," the general law relating to the filling of a vacancy on the county commission is not applicable, and the special election to fill the vacancy in the office of county commissioner should be conducted pursuant to the general special election provisions of the Georgia Election Code, O.C.G.A. §§ 21-2-540 and 21-2-541, as is the case with vacancies in other county offices when there is no specific provision which applies. 1990 Op. Att'y Gen. No. U90-9.

ARTICLE 2

COUNTY GOVERNING AUTHORITIES

JUDICIAL DECISIONS

Cited in McCracken v. Gainesville Tribune, Inc., 146 Ga. App. 274, 246 S.E.2d 360 (1978).

36-5-20. Official names of county governing authorities.

The words "Roads and Revenues" are stricken from the official names of all of the governing authorities of the counties of this state, so that the official names of the governing authorities of the counties will be changed from "Board of Commissioners of Roads and Revenues of _____ County" and from the "Commissioner of Roads and Revenue of _____ County" to "Board of Commissioners of _____ County" and "Commissioner of _____ County," respectively. (Ga. L. 1968, p. 1141, § 1; Ga. L. 1982, p. 3, § 36.)

Cross references. — "County governing authority" defined, § 1-3-3(7).

36-5-21. Vacancy in office of county commissioner or other governing authority.

(a) When a vacancy occurs in the office of a county governing authority in any county in which the local Act creating that governing authority for the county makes no provision for succession to fill the vacancy and the unexpired term of office exceeds six months in duration, it shall be the duty of the judge of the probate court of the county to call a special election to elect a successor and fill the vacancy in not less than 30 nor more than 60 days. The election shall be held as provided by Chapter 2 of Title 21, the "Georgia Election Code," and the cost of the election shall be defrayed by the proper county authorities. If the unexpired term to be filled is less than six months in duration and the local Act creating the governing authority makes no provision to fill the vacancy, the judge of the superior court of the county shall have the power to appoint a successor to fill the unexpired term.

(b) Unless otherwise provided by local law, when the office of any county commissioner is vacated for any reason and a special election is required to be called pursuant to subsection (a) of this Code section, the remaining members of the board of commissioners shall constitute the governing authority of the county during the interim period between the creation of the vacancy and the election and qualification of a successor to fill the vacancy pursuant to subsection (a) of this Code

section, except that if as a result of that vacancy or any combination of such vacancies there is no longer any commissioner remaining in office to constitute the county governing authority, the judge of the probate court of the county shall serve as the county governing authority until the election and qualification under subsection (a) of this Code section of all successors to the vacated positions on the county governing authority.

(c) A judge of the probate court serving as the county governing authority pursuant to subsection (b) of this Code section shall receive for such service, in addition to any other compensation that judge is authorized by law to receive, an amount equal to the amount the chairman of the board of commissioners or the sole commissioner, as applicable, would have been authorized to receive for that period of service. (Ga. L. 1898, p. 93, § 1; Civil Code 1910, § 627; Code 1933, § 23-801; Ga. L. 1947, p. 173, § 1; Ga. L. 1986, p. 328, § 1; Ga. L. 1987, p. 1482, § 6.)

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Duty arises instantly upon occurrence of vacancy. Newton v. Stembridge, 212 Ga. 828, 96 S.E.2d 504 (1957).

Cited in Stembridge v. Newton, 213 Ga. 304, 99 S.E.2d 133 (1957).

OPINIONS OF THE ATTORNEY GENERAL

Filling vacancy in public office. — Vacancy in the office of tax collector is filled by temporary appointment by the ordinary (now county governing authority) until a special election to fill the vacancy is held and such special election may be held on the same day as the general election. 1945-47 Op. Att'y Gen. p. 83.

Special Act controls. — If a county has a special Act which varies this section, the county must follow the procedure there set forth. 1974 Op. Att'y Gen. No. U74-22 (see O.C.G.A. § 36-5-21).

Special elections. — O.C.G.A. § 36-5-21 is by its very term not applicable if the local act creating the governing authority for the county provides for the manner of succession to fill a vacancy. 1990 Op. Att'y Gen. No. U90-9.

When the local law creating the board of commissioners for Houston County, as amended, provides that, with regard to vacancies occurring more than one year prior to the expiration of the term of office, the vacancy "shall be filled by a special election called by the election superintendent of Houston County in the same manner as in the case to fill vacancies in other county offices ...," the general law relating to the filling of a vacancy on the county commission is not applicable, and the special election to fill the vacancy in the office of county commissioner should be conducted pursuant to the general special election provisions of the Georgia Election Code, O.C.G.A. §§ 21-2-540 and 21-2-541, as is the case with vacancies in other county offices when there is no specific provision which applies. 1990 Op. Att'y Gen. No. U90-9.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 164 et seq.

C.J.S. — 20 C.J.S., Counties, § 163 et seq.

36-5-22. County manager authorized.

(a) The governing authority of any county of this state or the General Assembly may create in and for those counties in which it deems necessary or advisable the office of county manager and may vest in such office powers, duties, and responsibilities of an administrative nature. The qualifications, method of selection, appointment, compensation, tenure, and such other related matters pertaining to the office of county manager shall be provided for by the governing authority of the county.

(b) Nothing in this Code section shall pertain to consolidated governments which include all the area within any county.

(c) This Code section shall not apply to any county having a population of more than 500,000 according to the United States decennial census of 1990 or any future such census. (Ga. L. 1974, p. 435, §§ 1, 2; Ga. L. 1987, p. 1482, § 7; Ga. L. 1992, p. 2341, § 1.)

JUDICIAL DECISIONS

Constitutionality. — Ga. L. 1974, pp. 435-6 which was codified as O.C.G.A. § 36-5-22, does not conflict with Ga. Const. 1976, Art. IX, Sec. II, Para. I (see Ga. Const. 1983, Art. IX, Sec. II, Para. I) and is constitutional. Gray v. Dixon, 249 Ga. 159, 289 S.E.2d 237 (1982).

County governing authority powers. — Any attempt by the board of commissioners to confer "executive powers" on the office of county manager would be an "action affecting the ... form ... of the county governing authority" in violation of subsection (c)(2) of Ga. Const. 1983, Art. IX, Sec. II, Para. I. Gray v. Dixon, 249 Ga. 159, 289 S.E.2d 237 (1982).

Ordinance creating the office of county manager which tracked the language of O.C.G.A. § 36-5-22 and vested in that office certain administrative functions, and did not attempt to confer the executive powers reserved for the chair, was consistent with the county's home rule authority and did not violate Ga. Const. 1983, Art. IX, Sec. II, Para. I. Krieger v. Walton County Bd. of Comm'rs, 271 Ga. 791, 524 S.E.2d 461 (1999).

Defendant county manager did not have final authority over decisions that resulted in termination of an employee from the county; such authority rests with the board of commissioners under Georgia's home rule provisions in Ga. Const. 1983, Art. IX, Sec. II, Para. I. Lightsey v. Miles, 2005 U.S. Dist. LEXIS 15735 (S.D. Ga. July 26, 2005).

36-5-22.1. Powers and duties; delegation.

(a) The governing authority of each county has original and exclusive jurisdiction over the following subject matters:

(1) The directing and controlling of all the property of the county, according to law, as the governing authority deems expedient;

(2) The levying of a general tax for general county purposes and a special tax for particular county purposes;

(3) The establishing, altering, or abolishing of all roads, bridges, and ferries in conformity to law;

(4) Reserved;

(5) The filling of all vacancies in county offices unless some other body or official is empowered by law to so fill such vacancy;

(6) The examining, settling, and allowing of all claims against the county;

(7) The examining and auditing of the accounts of all officers having the care, management, keeping, collection, or disbursement of money belonging to the county or appropriated for its use and benefit and the settling of the same;

(8) The making of such rules and regulations for the support of the poor of the county, for the county police and patrol, for the promotion of health, and for quarantine as are authorized by law or not inconsistent therewith; and

(9) The regulating of peddling and fixing of the cost of licenses therefor.

(b) Nothing in this Code section shall be construed to prohibit a local law from delegating to a chairman or chief executive officer of a county governing authority jurisdiction over any subject matter provided for in subsection (a) of this Code section. (Code 1981, § 36-5-22.1, enacted by Ga. L. 1987, p. 1051, § 1, Ga. L. 1987, p. 1482, § 8.)

Code Commission notes. — Ga. L. 1987, p. 1051, § 1 and Ga. L. 1987, p. 1482, § 8 enacted similar Code sections designated as Code Section 36-5-22.1. The Code section is set forth above as enacted by the latter Act (Ga. L. 1987, p. 1482, § 8).

Cross references. — Application for and issuance of writ of mandamus against county board of commissioners to compel building, repair of county roads, § 9-6-21.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the provisions, decisions under former Code 1890, § 337, Ga. L. 1903, p. 41, former Civil Code 1910, and former §§ 36-5-1 and 36-5-2 are included in the annotations for this Code section.

Act of ordinary (now county governing authority) exercised in matters specified by statute are quasi-judicial functions; and therefore the ordinarys are not liable to suit, even for gross errors of judgment committed in

making such contracts. Paulding County v. Scoggins, 97 Ga. 253, 23 S.E. 845 (1895) (decided under former law).

Mandamus will not lie to compel ordinary (now county governing authority) to have bridge built, which was recommended by grand jury. Patterson v. Taylor, 98 Ga. 646, 25 S.E. 771 (1896) (decided under former Code 1890, § 337).

Discretion of ordinary (now county governing authority) as to rebuilding bridges not subject to control unless abused. Dale v. Barnett, 105 Ga. 259, 31 S.E. 167 (1898) (decided under former law).

Mandamus will not lie to collaterally attack order to alter public road. Crum v. Hargrove, 119 Ga. 471, 46 S.E. 626 (1904) (decided under Ga. L. 1903, p. 41).

Transfer of powers. O.C.G.A. § 36-5-22.1 did not prevent the county board from passing resolutions which effectively transferred much of the power of the county chairperson to the county board. Krieger v. Walton County Bd. of Comm'rs, 269 Ga. 678, 506 S.E.2d 366 (1998).

Ordinary (now county governing authority) keeps power in face of charter provision. — Manner of removing obstructions by proceedings before ordinary (now county governing authority) is not divested by municipal charter provisions permitting mayor and council to exercise this power. Hendricks v. Carter, 21 Ga. App. 527, 94 S.E. 807 (1918) (decided under former Civil Code 1910).

Ordinary (now county governing authority) cannot issue bonds to pay for work under contract. — Ordinary (now county governing authority) has power to make all contracts necessary to perform the duties cast upon the ordinary; but the ordinary cannot issue bonds to raise pay for the work done thereunder, this must be done by taxation. Dent v. Cook, 45 Ga. 323 (1872) (decided under former law).

Sheriff has no authority over commissions generated by use of county jail. — County sheriff was not entitled to keep commissions received from a company that provided telephone services to county jail inmates as revenue generated using county property or facilities—such as the jail—was itself county property and therefore subject to county authority under O.C.G.A. § 36-5-22.1. Although a sheriff could collect certain fees, such as fees for attending court, O.C.G.A. § 15-16-21 provided that such fees had to be turned over to the county's treasurer or fiscal officer. Lawson v. Lincoln County, 292 Ga. App. 527, 664 S.E.2d 900 (2008), cert. denied, 2008 Ga. LEXIS 899 (Ga. 2008).

Authority to enact ordinance. — Miller County, Ga., Ordinance No. 10-01, § 3 does not purport to supplant O.C.G.A. § 16-10-6 because the effect of § 3 is to strengthen § 16-10-6 by a broader prohibition with additional specific requirements for any exception; the county had authority, as an incident of the county's home rule power, to enact Miller County, Ga., Ordinance No. 10-01, § 3 so long as the ordinance did not conflict with general law. Bd. of Comm'rs v. Callan, 290 Ga. 327, 720 S.E.2d 608 (2012).

Power to lease. — Ordinary (now county governing authority) had power to lease directly to an individual certain realty for use in operating a filling station, as it was then being and had been used for 13 years. Such a lease, having been so executed was not void on the ground that the lease was not authorized by law, or that the interest thereby created extended beyond the term of the official then in office, or that it amounted to a commercial transaction in which the county was not authorized by law to engage. Black v. Forsyth County, 193 Ga. 571, 19 S.E.2d 297 (1942) (decided under former law).

Employment of counsel. — County governing authority has the implicit power to employ counsel for county officers. Stephenson v. Board of Comm'rs, 261 Ga. 399, 405 S.E.2d 488 (1991).

County governing authority's employment of counsel to represent a superior court clerk did not violate Ga. Const. 1983, Art. 9, Sec. 2, Paras. 1(c)(1) or (7), which preclude the authority from exercising any power in a manner affecting "any elective county office" or "any court or the personnel thereof." Stephenson v. Board of Comm'rs, 261 Ga. 399, 405 S.E.2d 488 (1991).

Cited in Holder v. Hall, 512 U.S. 874, 114 S. Ct. 2581, 129 L. Ed. 2d 687 (1994); Bodker v. Taylor, 2002 U.S. Dist. LEXIS 27447 (N.D. Ga. June 5, 2002); Hill v. Clayton County Bd. of Comm'rs, 283 Ga. App. 15, 640 S.E.2d 638 (2006); Pelphrey v. Cobb County, 547 F.3d 1263 (11th Cir. 2008).

OPINIONS OF THE ATTORNEY GENERAL

County commissioners may grant to private corporation a permit to construct sewer across a street dedicated to the county. 1970 Op. Att'y Gen. No. U70-36.

County commissioners have the authority to make a refund to the taxpayer so as to correct the error made to the extent of the interest of the county herein; however, should the county commissioners decline to make a refund in this case, the commissioners could successfully defend any effort to force the commissioners to do so under former Code 1933, § 20-1007 (see O.C.G.A. § 13-1-13). 1957 Op. Att'y Gen. p. 43.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 13.

C.J.S. — 20 C.J.S., Counties, §§ 22, 23. 40 C.J.S., Highways, § 253 et seq.

ALR. — Right of one detained pursuant to quarantine to habeas corpus, 2 ALR 1542.

Right and duty of highway contractor as to barricading or obstructing street, 7 ALR 1203; 104 ALR 955.

36-5-23. Salary of county commissioner in counties having population of not less than 56,400 or more than 60,000.

Reserved. Repealed by Ga. L. 2002, p. 1038, § 1, effective July 1, 2002.

Editor's notes. — This Code section was based on Code 1981, § 36-5-23, enacted by Ga. L. 1982, p. 533, §§ 1, 2; Ga. L. 1993, p. 91, § 36.

36-5-24. Definitions; compensation of members of county governing authorities.

(a) As used in this Code section, the term:

(1) "County governing authority" means a governing authority as defined in paragraph (7) of Code Section 1-3-3 and an elected county chief executive officer.

(2) "Expenses in the nature of compensation" means any expense allowance or any form of payment or reimbursement of expenses other than reimbursement for expenses actually and necessarily incurred by members of a county governing authority.

(b) Unless otherwise provided by local law, the governing authority of each county is authorized to fix the salary, compensation, expenses, and expenses in the nature of compensation of the members of the governing authority subject to the following conditions:

(1) Any increase in salary, compensation, expenses, or expenses in the nature of compensation for members of a county governing authority shall not be effective until the first day of January of the year following the next general election held after the date on which the action to increase the compensation was taken;

(2) A county governing authority shall take no action to increase salary, compensation, expenses, or expenses in the nature of compensation until notice of intent to take such action and the fiscal impact of such action has been published in a newspaper designated as the legal organ for the county at least once a week for three consecutive weeks immediately preceding the meeting at which the action is taken; and

(3) Such action shall not be taken during the period of time beginning with the date that candidates for election as members of the county governing authority may first qualify as such candidates and ending with the first day of January following the date of qualification.

(c) Salary, compensation, expenses, and expenses in the nature of compensation paid to members of a county governing authority in accordance with applicable local or general salary laws in effect on January 1, 2001, and as subsequently amended, shall continue in full force and effect as compensation for such county officials unless such compensation is increased pursuant to subsection (b) of this Code section; and this Code section shall not affect the power of the General Assembly at any time by local or general law to increase or decrease any or all of such compensation or by local law to withdraw the authority otherwise granted to a county governing authority under this Code section. (Code 1981, § 36-5-24, enacted by Ga. L. 2001, p. 789, § 1.)

Editor's notes. — Former Code Section 36-5-24 was repealed and reserved by Ga. L. 1994, p. 237, § 2, effective July 1, 1994. This former Code section, relating to salary of county commissioner in counties having a population of not less than 12,300 or more than 12,400, was based on Code 1981, § 36-5-23, enacted by Ga. L. 1982, p. 588, §§ 1, 2; Code 1981, § 36-5-24, as redesignated by Ga. L. 1983, p. 3, § 27; Ga. L. 1993, p. 91, § 36.

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

36-5-25. Salary of county commissioner in county administered by single commissioner.

(a) In every county of this state in which the county government is administered by a single county commissioner, such county commissioner shall be entitled to receive a minimum annual salary equal in amount to the minimum annual salary provided for the sheriff of any such county pursuant to the provisions of subsection (a) of Code Section 15-16-20; provided, however, that a local law may provide for a greater

annual salary than such minimum salary or may provide an expense allowance in addition to such minimum salary or in addition to such greater salary; provided, further, that any such county commissioner may by resolution elect to receive a salary of lesser amount which is provided by a local law.

(b) The provisions of subsection (a) of this Code section shall not affect any automobile allowance provided for any such county commissioner pursuant to local law. (Code 1981, § 36-5-25, enacted by Ga. L. 1986, p. 347, § 1; Ga. L. 1994, p. 237, § 2; Ga. L. 2002, p. 1038, § 2.)

36-5-26. Authorization for service of process.

A county governing authority shall have the power to authorize any of the officers, agents, and employees of the county to serve, in any manner prescribed by applicable law, any process, summons, notice, or order on all persons, as defined in Code Section 1-3-3 therein named, when:

(1) The paper to be served arises out of or relates to an activity or condition conducted or maintained by such person within the territorial jurisdiction of the county in violation of an applicable law or ordinance covering the following: public housing, building, electrical, plumbing, heating, ventilating, air-conditioning, air and water pollution control, solid waste management, and other technical or environmental codes; county business, occupation, and professional license tax ordinances; county privilege license or permit ordinances; or ordinances providing for the protection of facilities for the treatment or wholesale or retail distribution of water from tampering or theft which may arise either from a single isolated act or omission or from an activity or condition;

(2) The paper to be served originates in or is issued under the authority of the department or branch of county government employing such officer, agent, or employee; and

(3) Each and every day the condition is maintained or the activity is conducted is made a separate county offense by applicable law or ordinance.

Where any such paper names one or more persons who reside outside the territorial jurisdiction of the county, the several sheriffs, marshals, and constables of the several counties of this state are authorized and directed to serve any such paper and make appropriate return of such service by them, as other process is served and returned, on such named persons residing in their respective jurisdictions, upon receipt of a written request to make such service, for the fees allowed for service of process issued by the superior courts of this state. (Code 1981, § 36-5-26, enacted by Ga. L. 1992, p. 2122, § 1.)

36-5-27. Compensation supplement with designation as a certified county commissioner.

In addition to any other compensation to which a member of a county governing authority is entitled under general or local law, any such official who has been awarded a certificate from the University of Georgia, evidencing his or her successful completion of the voluntary course of training administered by the Carl Vinson Institute of Government resulting in designation as a certified county commissioner shall be entitled to a compensation supplement of $100.00 per month. With regard to members of the governing authority of a consolidated government, designation either as a certified county commissioner or a certified municipal official by the Carl Vinson Institute of Government shall be acceptable. (Code 1981, § 36-5-27, enacted by Ga. L. 2001, p. 902, § 18.)

36-5-28. Members of county governing authority to receive compensation increase when classified service employees receive increase; calculation; effective date.

Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the compensation to which a member of a governing authority is entitled under general or local law shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amount to which a member of a county governing authority is entitled under general or local law shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amount to which a member of a county governing authority is entitled under general or local law shall become effective on the first day of January following the date that the cost-of-living increases or general performance based increases received by state employees become effective; provided, however, that if the cost-of-living increases received by state employees become effective on January 1, such periodic changes in the amount to which a member of a county governing authority is entitled under general or local law shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective. (Code 1981, § 36-5-28, enacted by Ga. L. 2001, p. 902, § 18; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-55/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4" for "On and after January 1, 2001, whenever the employees in the classified service of the State Personnel Administration" in the first sentence of this Code section.

Cross references. — Salaries and fees of public officers and employees, T. 45, C. 7.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

36-5-29. Pay increases for certain members of county governing authorities.

(a) Compensation to which a member of a county governing authority is entitled under general or local law, including amounts provided for in Code Sections 36-5-27 and 36-5-28 shall be increased by multiplying said amounts by the percentage which equals 2.5 percent times the number of completed, four-year terms of office served by such member of a county governing authority where such terms have been completed after December 31, 2004, effective the first day of January following the completion of each such period of service.

(b) For a member of a county governing authority elected to two-year terms of office or six-year terms of office, the percentage increase provided for in subsection (a) of this Code section shall be 1.25 percent times the number of completed two-year terms or 3.75 percent times the number of completed six-year terms as applicable. (Code 1981, § 36-5-29, enacted by Ga. L. 2006, p. 568, § 11/SB 450.)

CHAPTER 6

COUNTY TREASURER

Sec.
36-6-1. Qualifications for office; election; commission; term; abolishment and fixing compensation of office by General Assembly.
36-6-2. Requirement of bond and oath.
36-6-3. Form of oath.
36-6-4. When bond to be given; form and amount.
36-6-5. Filing and recordation of oath and bond.
36-6-6. Recordation of bond to bind third parties; effect of recordation after 30 days.
36-6-7. Effect of Code Sections 36-6-5 and 36-6-6 on lien of bond.
36-6-8. Time at which lien of bond arises.
36-6-9. Governor's directions relating to bond; payment of costs of transmitting and recording bond.
36-6-10. Location of office.
36-6-11. Books and stationery furnished by county.
36-6-12. Compensation and fees.
36-6-13. Receipt of commission or fees in connection with certain road contracts; collection and disbursement of road contract funds.
36-6-14. Duties generally.
Sec.
36-6-15. Collection and disbursal of funds generally.
36-6-16. Deposits of county funds in designated depositories.
36-6-16.1. Deposit of funds held for benefit of third persons by officer of county or court in treasury of counties having population of 600,000 or more.
36-6-17. Furnishing of bonds by depositories selected by treasurer.
36-6-18. Arrangements for payment of interest on deposits; disposition of interest payments.
36-6-19. Disposition of books of treasurer when full.
36-6-20. Delivery of money, books, papers, and property to successor.
36-6-21. Final settlement of accounts.
36-6-22. Requirement of accountings by treasurer.
36-6-23. Proceedings upon failure of treasurer to render accounting.
36-6-24. Removal of treasurer.
36-6-25. Filling of vacancies.
36-6-26. Bonds of persons appointed to fill vacancies.
36-6-27. Execution against county treasurer for failure to pay over money.
36-6-28. Purchase of county orders at less than full value or refusal to pay order.

Cross references. — Accounting for public funds generally, T. 45, C. 8.

OPINIONS OF THE ATTORNEY GENERAL

It would not be proper for anyone to assume duties of treasurer nor would it be proper for the treasurer to attempt to delegate the treasurer's responsibilities and duties to some other officer or other person. 1965-66 Op. Att'y Gen. No. 65-94.

36-6-1. Qualifications for office; election; commission; term; abolishment and fixing compensation of office by General Assembly.

(a) No other conditions of eligibility are required for the office of county treasurer than those which apply to all other county officers, provided that no other county officer can also be county treasurer.

(b) County treasurers shall be elected and commissioned in the same manner and at the same time as clerks of the superior courts and shall hold their offices for terms of four years. The General Assembly, by local law, may abolish the office of county treasurer in any county and may fix the compensation of the county treasurer. (Orig. Code 1863, § 520; Code 1868, § 584; Code 1873, § 546; Code 1882, § 546; Civil Code 1895, § 452; Civil Code 1910, § 568; Code 1933, § 23-1002; Ga. L. 1983, p. 1212, § 1.)

Cross references. — Eligibility for county office, Ga. Const. 1983, Art. IX, Sec. I, Para. III. Eligibility for public office generally, T. 45, C. 2.

Law reviews. — For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

JUDICIAL DECISIONS

Cited in Nash v. Pierce, 238 Ga. App. 466, 519 S.E.2d 462 (1999).

36-6-2. Requirement of bond and oath.

No appointment or election to the office of county treasurer is effective until bond and security is given and the oath of office is taken. (Orig. Code 1863, § 517; Code 1868, § 581; Code 1873, § 543; Code 1882, § 543; Civil Code 1895, § 449; Civil Code 1910, § 565; Code 1933, § 23-1003.)

JUDICIAL DECISIONS

When duties of office begin. — Since the treasurer reelected for the new term beginning January 1, did not qualify by giving the bond and security and taking the oath of office until March 13, the treasurer necessarily did not begin to perform the duties of that office under the law for the new term until March 13. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

Effect of recital in bond contradicting beginning of duties of office. — Although the bond given as security recited that the bond was to cover the term of four years beginning January 1, such recital merely describes the term for which the treasurer was elected. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

Treasurer holds office until successor qualified. — County treasurer qualified and holding office for the term beginning January 1, continued to hold office four years later until the treasurer's successor, although the same individual, had qualified. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 123 et seq.

36-6-3. Form of oath.

In addition to the oath required of all public officers, before entering on the duties of their office, county treasurers must take the following oath:

"I, _____, do swear that I will faithfully collect, disburse, and account for all moneys or other effects of the county, and otherwise faithfully discharge all the duties required of me by law as county treasurer. So help me God." (Orig. Code 1863, § 522; Code 1868, § 586; Code 1873, § 548; Code 1882, § 548; Civil Code 1895, § 454; Civil Code 1910, § 570; Code 1933, § 23-1004; Ga. L. 1987, p. 3, § 36.)

Cross references. — Oaths required of public officers generally, T. 45, C. 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 124.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 59, 60.

36-6-4. When bond to be given; form and amount.

Within 30 days after his election or appointment, the county treasurer shall give a bond payable to the county governing authority with securities approved by such authority, in a sum which in its judgment will be ample to protect the county from any loss. (Orig. Code 1863, § 523; Code 1868, § 587; Code 1873, § 549; Code 1882, § 549; Ga. L. 1889, p. 51, § 1; Civil Code 1895, § 455; Civil Code 1910, § 571; Ga. L. 1918, p. 109, § 1; Code 1933, § 23-1005.)

JUDICIAL DECISIONS

Effect of approval of insufficient bond. — Approval of a bond of a county treasurer for a penalty much less than that required by this section does not relieve the county treasurer of the necessity of giving a bond in the amount of the statutory penalty, when cited to do so by the proper officer. Tarver v. Wooten, 147 Ga. 19, 92 S.E. 532 (1917) (see O.C.G.A. § 36-6-4).

Effect of invalid Act purporting to abolish office and fix bond. — Act purporting to abolish the office of treasurer of a county and to fix the amount of the bond of the clerk, which was later held invalid, is no authority for excusing that treasurer from giving a bond in the penal sum prescribed for bonds of county treasurers by this section. Tarver v. Wooten, 147 Ga. 19, 92 S.E. 532 (1917) (see O.C.G.A. § 36-6-4).

Cited in Carter v. Veal, 42 Ga. App. 88,

155 S.E. 64 (1930); Hancock County v. Hancock Nat'l Bank, 67 F.2d 421 (5th Cir. 1933).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 130 et seq., 351 et seq., 359, 363, 492, 493.

C.J.S. — 20 C.J.S., Counties, § 160.

36-6-5. Filing and recordation of oath and bond.

(a) The oath of office of the county treasurer must be entered on the minutes of the county governing authority and filed in his office. His official bond must be filed and recorded in such office.

(b) When one or more sureties on the bond of the county treasurer own real estate in any county or counties other than the county in which the treasurer holds office, such bond, within 30 days after the execution thereof, shall be recorded in the county or counties wherein the real estate is situated, by the county governing authority, or such bond shall be recorded within 30 days after its execution by the authority in the book of record of bonds of county officers. After the treasurer's bond is accepted and recorded in the county in which the treasurer holds office, the county governing authority of such county shall forward the same to the county governing authority in each county in which any one or more sureties on the bond own any real estate; such county governing authority to whom the bond is sent shall record the same in accordance with this subsection. (Laws 1838, Cobb's 1851 Digest, p. 215; Code 1863, § 521; Code 1868, § 585; Code 1873, § 547; Code 1882, § 547; Ga. L. 1890-91, p. 104, §§ 1, 2; Civil Code 1895, §§ 453, 974, 975; Civil Code 1910, §§ 569, 1241, 1242; Code 1933, §§ 23-1006, 23-1007, 23-1008.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 134.

C.J.S. — 20 C.J.S., Counties, §§ 159, 160. 67 C.J.S., Officers and Public Employees, § 59 et seq.

36-6-6. Recordation of bond to bind third parties; effect of recordation after 30 days.

As against the interests of third parties acting in good faith and without notice who may have acquired a transfer or lien binding the real estate of any surety on the bond of any county treasurer situated in any county other than that in which the treasurer holds office, no such real estate of the surety shall be bound from the date of the bond unless the bond is recorded in the county. When the bond is recorded after 30

days, the real estate of the surety situated in any county other than that in which the treasurer holds office shall be bound only from the date on which the bond is recorded. (Ga. L. 1890-91, p. 104, § 3; Civil Code 1895, § 976; Civil Code 1910, § 1243; Code 1933, § 23-1009.)

36-6-7. Effect of Code Sections 36-6-5 and 36-6-6 on lien of bond.

Nothing in Code Sections 36-6-5 and 36-6-6 shall be construed to affect the validity or force of the lien of any such bond from the date thereof as between the parties thereto. (Ga. L. 1890-91, p. 104, § 4; Civil Code 1895, § 977; Civil Code 1910, § 1244; Code 1933, § 23-1010.)

36-6-8. Time at which lien of bond arises.

When any official bond is executed by any county treasurer or any person acting as such, the property of the treasurer or person acting as such, as well as the security or securities on the bond, shall be bound from the time of the execution thereof for the payment of any and all liability arising from the breach of the bond. (Ga. L. 1876, p. 15, § 1; Code 1882, § 549a; Civil Code 1895, § 456; Civil Code 1910, § 572; Code 1933, § 23-1012.)

JUDICIAL DECISIONS

Statement of policy. — This section is an expression of public policy by the law-making branch of the state, providing protection to public funds. It takes precedence over the generally recognized public policy in favor of free alienation of private property. Chero-Cola Co. v. May, 169 Ga. 273, 149 S.E. 895 (1929) (see O.C.G.A. § 36-6-8).

Scope of lien. — Execution of an official bond creates a lien upon the property of the principal, and the property of the principal's sureties, for the payment of all liability that arises from breach of the bond. United States Fid. & Guar. Co. v. Richmond County, 174 Ga. 599, 163 S.E. 482 (1932).

No lien on property held in trust. — When property is held in trust the property is not subject to an execution issued against trustees as principal and surety on a county treasurer's bond, notwithstanding at the time the bond was executed such trustees were the apparent owners of the land. Hurst v. Commissioners of DeKalb County, 110 Ga. 33, 35 S.E. 294 (1900).

Priority of lien. — Conceding that this section creates a lien, the statute does not fix the priority of such a lien. Gormley v. Troup County, 178 Ga. 446, 173 S.E. 672 (1934) (see O.C.G.A. § 36-6-8).

Timing. — When effort is made to arrest execution on property because the property is encumbered by a security deed, but it is not alleged that such deed is anterior in date to the bond of the treasurer, such effort will be unavailing. Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287 (1915).

Rights of sureties. — In view of a recognition by the personal sureties on a bond of the sureties' continued liability to the secured party under the bond, and of the necessary implication of a final judgment rendered, a court did not err in failing to make an express ruling upon the question of whether or not a purported cancellation entered on the original execution based on that bond was void.

United States Fid. & Guar. Co. v. Clarke, 187 Ga. 774, 2 S.E.2d 608 (1939).

Cited in Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932); Traylor v. Gormley, 177 Ga. 135, 169 S.E. 850 (1933).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 135.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 370.

36-6-9. Governor's directions relating to bond; payment of costs of transmitting and recording bond.

It shall be the duty of the Governor to give written or printed directions to the county governing authority upon the requirements of Code Sections 36-6-5 through 36-6-7, as other instructions and directions are now given in reference to the bonds of county treasurers. The costs of transmitting and recording the bonds shall be paid by the county treasurer. (Ga. L. 1890-91, p. 104, § 5; Civil Code 1895, § 978; Civil Code 1910, § 1245; Code 1933, § 23-1011; Ga. L. 1982, p. 3, § 36.)

36-6-10. Location of office.

The county treasurer must keep his office at the county site or at some place within one mile of the courthouse. (Orig. Code 1863, § 526; Code 1868, § 590; Code 1873, § 552; Code 1882, § 552; Civil Code 1895, § 459; Civil Code 1910, § 575; Code 1933, § 23-1014.)

36-6-11. Books and stationery furnished by county.

All books and stationery required by the county treasurer must be furnished at the expense of the county. (Orig. Code 1863, § 528; Code 1868, § 592; Code 1873, § 554; Code 1882, § 554; Civil Code 1895, § 461; Civil Code 1910, § 577; Code 1933, § 23-1020.)

36-6-12. Compensation and fees.

County treasurers are entitled to receive the following fees:

(1) For receiving and paying out county funds:

(A) Two and one-half percent for receiving all sums up to $10,000.00.

(B) Two and one-half percent for paying out all sums up to $10,000.00.

(C) One and one-fourth percent for receiving the excess of any sum over $10,000.00.

(D) One and one-fourth percent for paying out the excess of any sum over $10,000.00.

(2) For making his returns to the grand jury, $1.00.

(3) For making his returns to the judge of the probate court, $1.00.

However, in no case shall the compensation of a county treasurer exceed the sum of $3,000.00 per annum, unless within the sole discretion of the proper governing authority of the county the compensation is increased to a sum not to exceed $3,600.00 per annum. (Orig. Code 1863, § 3627; Code 1868, § 3652; Code 1873, § 3703; Ga. L. 1874, p. 20, § 1; Code 1882, § 3703; Ga. L. 1890-91, p. 76, § 1; Civil Code 1895, § 472; Civil Code 1910, § 588; Code 1933, § 23-1013; Ga. L. 1953, Nov.-Dec. Sess., p. 176, § 1.)

Cross references. — Compensation of county officers generally, Ga. Const. 1983, Art. IX, Sec. I, Para. III. Authority of General Assembly to fix compensation of county treasurers, § 36-6-1.

JUDICIAL DECISIONS

How commissions to be computed. — Commissions allowed to county treasurers under former Civil Code 1895, § 472 (see O.C.G.A. § 36-6-12) are to be computed upon their annual receipts and disbursements and not semiannual returns as provided by Ga. L. 1876, p. 13, §§ 1-3 (see O.C.G.A. § 36-1-7). Burks v. Commissioners of Dougherty County, 99 Ga. 181, 25 S.E. 270 (1896).

Law providing compensation for county treasurers is found in this section, and by reference to that it will be observed that the county treasurer receives compensation only for paying out "county funds" and for certain other services. McFarlin v. Board of Drainage Comm'rs, 153 Ga. 766, 113 S.E. 447 (1922) (see O.C.G.A. § 36-6-12).

Moneys received from sale of bonds lawfully issued by county for erection of a courthouse are "county funds" within the meaning of this section. Chattooga County v. Megginson, 139 Ga. 509, 77 S.E. 579 (1913) (see O.C.G.A. § 36-6-12).

Moneys received from temporary loan or loans to supply casual deficiencies of revenue, lawfully made, are "county funds" within the meaning of this section. Williams v. Sumter County, 21 Ga. App. 716, 94 S.E. 913 (1918) (see O.C.G.A. § 36-6-12).

No right to commission for disbursing money illegally borrowed. — When a county treasurer receives from the county authorities, by virtue of the treasurer's office, money which has been illegally borrowed by the authorities, and disburses the money for current expenses of the county, and the illegal loans are repaid from money coming from taxes or other legitimate sources, the treasurer is not entitled to commissions for handling the illegally borrowed money, to be paid out of county funds proper. Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287 (1915); Williams v. Sumter County, 21 Ga. App. 716, 94 S.E. 913 (1918).

Paying accrued interest. — Treasurer, for making a disbursement of county funds in paying accrued interest on bonds, is entitled to commissions under this section. Chattooga County v. Megginson, 139 Ga. 509, 77 S.E. 579 (1913) (see O.C.G.A. § 36-6-12).

Effect of local Act. — Under Ga. Const. 1976, Art. IX, Sec. I, Para. VI (no comparable provision in Ga. Const. 1983), the legislature may fix the compensation of county treasurers, and if such a local Act is passed, it is paramount to this section that the treasurer is paid according to the terms of the Act instead of the terms of this section. Phillips v. Hanks, 154 Ga. 244, 113 S.E. 806 (1922) (see O.C.G.A. § 36-6-12).

For constitutionality of local Act fixing compensation of county treasurer, see Moore v. Houston County, 124 Ga. 898, 53 S.E. 506 (1906).

Cited in Hicks v. Bibb County, 44 Ga. App. 538, 162 S.E. 157 (1932); Richmond County v. Pierce, 234 Ga. 274, 215 S.E.2d 665 (1975).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, §§ 177, 195, 205, 206.

36-6-13. Receipt of commission or fees in connection with certain road contracts; collection and disbursement of road contract funds.

No county treasurer or other county official shall receive any commission on funds received or disbursed in connection with county contracts with the Department of Transportation for the construction or repair of roads; and this Code section and Code Sections 36-6-12 and 36-6-15 shall not apply to funds received or disbursed on such contracts. The funds received from county contracts with the Department of Transportation for the construction and repair of roads shall be collected by the county treasurer, in those counties having a county treasurer, and shall be disbursed by him without any commission or fee; in those counties having no county treasurer, the funds from these contracts shall be collected and disbursed by the usual officers without any commission or fee. (Ga. L. 1939, p. 277, §§ 1, 2.)

Cross references. — Authority of county to contract for public road purposes generally, § 32-4-60 et seq.

36-6-14. Duties generally.

It is the duty of the county treasurer:

(1) To collect diligently from all officers and others all moneys due the county;

(2) To examine the minutes and execution dockets of the different courts of the county, to demand and receive all moneys appearing to be due thereon, and to institute proceedings against defaulters;

(3) To pay without delay, when there are sufficient funds, all orders or other debts due, according to their dates; when there are not sufficient funds, payment shall be made as prescribed in Code Section 36-11-4;

(4) To take a receipt on each order when paid and carefully file it away;

(5) To keep a well-bound book in which shall be entered all receipts, stating when received, from whom, and on what account,

and all amounts paid out, stating when paid, to whom, and on what account;

(6) To keep a well-bound book in which shall be entered a full description of all county orders or other forms of indebtedness, as they are presented;

(7) To record a copy of the orders of the county governing authority levying county taxes;

(8) To exhibit to the first grand jury at the first session of the superior court of each year a full statement of the condition of the county treasury up to that time;

(9) On the second Monday in January of each year, to file with the county governing authority a full statement of his account, accompanied by his vouchers for the preceding year, together with his estimate of the indebtedness of the county for the ensuing year and the means of providing therefor;

(10) To place his books and vouchers before the grand jury or the county governing authority for examination when called upon to do so;

(11) To appear before the county governing authority or the grand jury to render an account of his actings and doings as county treasurer; and

(12) To publish at the door of the courthouse and in a public newspaper, if there is one published in the county, a copy of his annual statement to the county governing authority. (Ga. L. 1859, p. 25, § 1; Code 1863, § 527; Code 1858, § 591; Code 1873, § 553; Code 1882, § 553; Civil Code 1895, § 460; Civil Code 1910, § 576; Code 1933, § 23-1015; Ga. L. 1982, p. 3, § 36.)

JUDICIAL DECISIONS

Publication not connected with probate court proceedings. — Publication of the statement required to be made under this section was neither directly nor remotely connected with the business or any proceeding of the court of ordinary (now judge of the probate court). Howard v. Early County, 104 Ga. 669, 30 S.E. 880 (1898) (see O.C.G.A. § 36-6-14).

Power of ordinary (now judge of the probate court) to cite treasurer to appear. — Under former Code 1873, §§ 553, 563, 337 (see O.C.G.A. §§ 36-6-14, 36-6-27, and 36-5-1(7) (since repealed)) the ordinary (now judge of the probate court) had jurisdiction to cite the county treasurer to appear before the ordinary for a settlement of the treasurer's accounts as well as to order that moneys in the treasurer's hands be paid out by the treasurer to the proper persons; and upon the treasurer's failure to pay, to issue an execution for such default. Smith v. Outlaw, 64 Ga. 677 (1880).

Upon refusal to pay, mandamus will lie against treasurer of county to compel payment of any part of salary when by law the salary is payable and after the salary has been demanded, although at the time of making demand no formal warrant had issued therefor. Clark v. Eve, 134 Ga. 788, 68 S.E. 598 (1910).

Use of record in evidence. — When a county treasurer failed to comply with the requirements of former Code 1882, §§ 508 and 553 (see O.C.G.A. §§ 36-6-14 and 36-11-5), and when an execution was issued by the ordinary (now judge of the probate court) against the treasurer as a defaulter, the treasurer could not take advantage of the treasurer's own negligence so as to substitute evidence of a lower character for the record which it was incumbent upon the treasurer to make out and deposit. Price v. Douglas County, 77 Ga. 163, 3 S.E. 240 (1887).

When bank acts as county treasurer. — Bank acting as county depository becomes a quasi-public officer. It is therefore the duty of such bank, acting as county treasurer, to receive the surplus of the fine and forfeiture fund, and hold the funds for distribution as required by law. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

Fund raised by private donation not county fund. — Fund raised by private donation, for courthouse, handled by ordinary (now judge of the probate court) and not paid into treasurer, was not a county fund in the sense used in former Civil Code 1895, §§ 458 and 460 (see O.C.G.A. §§ 36-6-14 and 36-6-15), and not demandable by the treasurer. Worth County v. Sykes, 2 Ga. App. 175, 58 S.E. 380 (1907).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, §§ 195, 205, 206.

36-6-15. Collection and disbursal of funds generally.

All county funds are to be paid to and disbursed by the county treasurer except such as may be specially excepted by law, which shall be collected and disbursed as specially directed. (Laws 1825, Cobb's 1851 Digest, p. 211; Code 1863, § 525; Code 1868, § 589; Code 1873, § 551; Code 1882, § 551; Civil Code 1895, § 458; Civil Code 1910, § 574; Code 1933, § 23-1016.)

JUDICIAL DECISIONS

When bank is county treasurer. — Bank acting as county depository becomes a quasi-public officer. It is therefore the duty of such bank, acting as county treasurer, to receive the surplus of the fine and forfeiture fund, and hold the funds for distribution as required by law. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953).

Liability for failure to disburse money illegally borrowed. — Where the authorities in charge of the finances borrowed money for county purposes without authority of law, and the money thus unlawfully borrowed was received by the county treasurer as county funds, the county treasurer is liable for failure to disburse the money. Mason v. Commissioners of Rds. & Revenues, 104 Ga. 35, 30 S.E. 513 (1898).

Money borrowed to meet expenses not county funds within meaning of section. Hall v. County of Greene, 119 Ga. 253, 46 S.E. 69 (1903) (see O.C.G.A. § 36-6-15).

Fund raised by private donation not county fund. — Fund raised by private donation, for courthouse, handled by ordinary (now judge of the probate court) and not paid into treasurer, was not a county fund in sense used in former Civil Code 1895, §§ 458 and 460 (see O.C.G.A. §§ 36-6-14 and 36-6-15), and not demandable by the treasurer. Worth County v. Sykes, 2 Ga. App. 175, 58 S.E. 380 (1907).

Proceeds of county bonds. — Ordinary (now judge of the probate court) who receives the proceeds of county bonds may be compelled by mandamus to turn the funds over to the county treasurer. Aaron v. German, 114 Ga. 587, 40 S.E. 713 (1902).

How affected by contract. — In view of former Civil Code 1895, §§ 458 and 460 (see O.C.G.A. §§ 36-6-14 and 36-6-15), mandamus was not granted a county treasurer against county commissioners to compel delivery to the treasurer of balance of purchase price of bonds sold by them to a bank, under contract that proceeds should be left on deposit. Smith v. Hodgson, 129 Ga. 494, 59 S.E. 272 (1907).

Cited in Cureton v. Wheeler, 172 Ga. 879, 159 S.E. 283 (1931); Hancock County v. Hancock Nat'l Bank, 67 F.2d 421 (5th Cir. 1933); Harrison v. May, 228 Ga. 684, 187 S.E.2d 673 (1972).

OPINIONS OF THE ATTORNEY GENERAL

Assumption of duties by another. — It would not be proper for anyone to assume the duties of the treasurer nor would it be proper for the treasurer to attempt to delegate the treasurer's responsibilities and duties to some other officer or other person. 1965-66 Op. Att'y Gen. No. 65-94.

Purchase of right of way. — Laws of this state do not authorize the setting aside of moneys in a "special fund" to purchase a right of way for county roads. 1969 Op. Att'y Gen. No. 69-231.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, §§ 195, 319, 320.

36-6-16. Deposits of county funds in designated depositories.

The treasurers of the several counties are authorized to deposit the county funds which may come into their hands as county treasurers in any bank or banking institution which has been designated by law as a depository for the funds of the state. (Ga. L. 1917, p. 199, § 1; Code 1933, § 23-1017.)

Law reviews. — For article considering the public official's potential liability for funds, losses and torts, and suggesting insurance coverage, see 11 Mercer L. Rev. 288 (1960).

JUDICIAL DECISIONS

Requirements of section not absolute. — None of these provisions, Ga. L. 1917, p. 199, §§ 1, 2, and Ga. L. 1924, p. 86, §§ 1, 2 (see O.C.G.A. §§ 36-1-8, 36-6-16 and 36-6-17), make the statutory requirements absolute. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

It must be observed that neither Ga. L. 1917, p. 199, § 1 (see O.C.G.A. § 36-6-16) nor Ga. L. 1924, p. 86, §§ 1, 2 (see O.C.G.A. § 36-1-8) make the statutory requirements absolute; county treasurers may follow the provisions of either of these statutes, and thereby become absolutely safe from loss, as well as making safe the public funds with which they are entrusted; however, it appears the treasurer may keep the funds in the treasurer's possession so long as the treasurer is prepared to pay the funds out when lawfully authorized and required so to do.

Allen v. Henderson, 48 Ga. App. 74, 172 S.E. 94 (1933).

Right to receive deposit not conditional upon giving bond. — Former Code 1933, § 23-1018 (see O.C.G.A. § 36-6-17) did not purport to condition the right to receive the deposit upon the giving of a bond but fixed a duty on the depository which has undertaken so to act to give a bond to the treasurer sufficient to protect the treasurer officially from any loss. Hancock County v. Hancock Nat'l Bank, 67 F.2d 421 (5th Cir. 1933).

Fact of deposit is not default. — County treasurers in Georgia very generally deposit the treasurers' public funds in a bank as a convenient and safe method of handling. Such deposits have never been considered as amounting to a default. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

Treasurer liable if unable to produce funds. — Notwithstanding such deposits, the treasurer and the treasurer's bondsmen are liable, if the funds are not forthcoming when officially required. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

Cited in Hancock County v. Hancock Nat'l Bank, 67 F.2d 421 (5th Cir. 1933); American Sur. Co. v. City of Thomasville, 73 F.2d 584 (5th Cir. 1934); Austin-Western Rd. Mach. Co. v. Fayette County, 99 F.2d 565 (5th Cir. 1938).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 7 et seq.

C.J.S. — 20 C.J.S., Counties, §§ 195, 205, 206. 26B C.J.S., Depositaries, § 40 et seq.

36-6-16.1. Deposit of funds held for benefit of third persons by officer of county or court in treasury of counties having population of 600,000 or more.

(a) It shall be lawful in all counties of this state having a population of 600,000 or more according to the United States decennial census of 1990 or any future such census for any county officer and any officer of any court, including the superior court in such counties, having in his possession and custody any funds, including trust funds, held for the benefit of any third person or litigant or for any purpose or subject to the order of any court or other tribunal to deposit such funds for safekeeping in the treasury of the county and to accept therefor the receipt of the treasurer or other fiscal officer of such county.

(b) The original custodian of such fund before making any deposit may require the treasurer or other fiscal officer to execute in his favor a special bond in an amount not less than the aggregate of all funds so deposited and held by the treasurer or other fiscal officer, which bond with security approved by the superior court of such county shall be conditioned to repay or disburse all of such funds under proper legal authority. In lieu of other security on such bond, the treasurer or other fiscal officer may deposit in a safe place a bond of the United States Treasury in an amount not less than the aggregate of all deposits secured by such bond.

(c) The treasurer of any county or other fiscal officer charged with the custody of county funds may decline to accept funds from any officer or

officer of the court for deposit and safekeeping when in the judgment of such treasurer or other fiscal officer the conditions imposed are burdensome or would cause hardship or financial loss.

(d) Any officer or officer of the court who deposits funds in his custody in the treasury of the county of such officer or officer of the court shall be relieved of personal responsibility for the safekeeping of such funds as may be entrusted to the treasury of the county under this Code section.

(e) This Code section shall not be interpreted to prevent or delay the direct payment into the county treasury of all funds belonging to such county and collected by or held by an officer or officer of the court, but all of same shall be deposited immediately in the county treasury without the requirement of any special bond. (Ga. L. 1963, p. 2180, §§ 1-5; Code 1981, § 36-6-16.1, enacted by Ga. L. 1982, p. 2107, § 32; Ga. L. 1992, p. 2350, § 1.)

36-6-17. Furnishing of bonds by depositories selected by treasurer.

Any depository of state funds selected by the county treasurer to be a depository of the county funds shall, in addition to the bond given to the state as security for the money of the state deposited in such bank, give to the county treasurer a bond in an amount sufficient to protect him from any loss, which bond shall be payable to him and shall be conditioned to account fully to him for all county moneys that may be deposited by him as county treasurer under the terms of this article. (Ga. L. 1917, p. 199, § 2; Code 1933, § 23-1018.)

JUDICIAL DECISIONS

Requirements of section not absolute. — None of these provisions, Ga. L. 1917, p. 199, §§ 1, 2 and Ga. L. 1924, p. 86, §§ 1, 2 (see O.C.G.A. §§ 36-1-8, 36-6-16, and 36-6-17), make the statutory requirements absolute. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

Right to receive deposit not conditional upon giving bond. — Former Code 1933, § 23-1018 (see O.C.G.A. § 36-6-17) did not purport to condition the right to receive the deposit upon the giving of a bond but fixed a duty on the depository which has undertaken so to act to give a bond to the treasurer sufficient to protect the treasurer officially from any loss. Hancock County v. Hancock Nat'l Bank, 67 F.2d 421 (5th Cir. 1933).

Treasurer does not make deposit at the treasurer's own risk and does not take bond for the treasurer's personal benefit, but the treasurer acts throughout for the county and in the treasurer's official capacity, and the bond is to be payable to the treasurer as treasurer and is to prevent loss to the treasury. Hancock County v. Hancock Nat'l Bank, 67 F.2d 421 (5th Cir. 1933).

Treasurer liable if unable to produce funds. — Notwithstanding such deposits, the treasurer and the treasurer's bondsmen are liable if the funds are not forthcoming when officially required. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

Fact of deposit not default. — County treasurers in Georgia very gener-

ally deposit the treasurers' public funds in a bank as a convenient and safe method of handling. Such deposits have never been considered as amounting to a default. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

Security company has duty to investigate. — When a security company agrees to execute a surety bond of a public officer, the company has the opportunity and should avail itself of every means of ascertaining exactly what position that officer occupies with respect to public funds for which the company assumes liability. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 19 et seq.

C.J.S. — 26B C.J.S., Depositaries, § 67.

36-6-18. Arrangements for payment of interest on deposits; disposition of interest payments.

The county treasurers are authorized to arrange with the bank to pay interest on the money deposited with the bank, but they are not required to do so. Any money received by them as interest must be paid by them into the treasury of the county. (Ga. L. 1917, p. 199, § 3; Code 1933, § 23-1019.)

JUDICIAL DECISIONS

Cited in Hancock County v. Hancock Nat'l Bank, 67 F.2d 421 (5th Cir. 1933); Austin-Western Rd. Mach. Co. v. Fayette County, 99 F.2d 565 (5th Cir. 1938).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 13.

C.J.S. — 26B C.J.S., Depositaries, § 101.

36-6-19. Disposition of books of treasurer when full.

When the books of the county treasurer are full, they must be deposited, together with the vouchers and other files relating thereto, in the office of the county governing authority and shall be part of its records. (Orig. Code 1863, § 529; Code 1868, § 593; Code 1873, § 555; Code 1882, § 555; Civil Code 1895, § 462; Civil Code 1910, § 578; Code 1933, § 23-1021.)

36-6-20. Delivery of money, books, papers, and property to successor.

Upon the resignation, expiration of the term, or removal from office of the county treasurer, he, or, if he is dead, his personal representative, must state his accounts and deliver all the money, books, papers, and property of the county to his successor, as do other officers. His

successor must report the same immediately to the county governing authority. (Orig. Code 1863, § 541; Code 1868, § 605; Code 1873, § 564; Code 1882, § 564; Civil Code 1895, § 470; Civil Code 1910, § 586; Code 1933, § 23-1022.)

JUDICIAL DECISIONS

Provisions of former Civil Code 1910, §§ 586 and 587 (see O.C.G.A. §§ 36-6-20 and 36-6-21) were not applicable to annual accounting and settlement made by the tax collector with the county commissioners. Read v. Glynn County, 145 Ga. 881, 90 S.E. 60 (1916).

36-6-21. Final settlement of accounts.

When the county treasurer or his personal representative has made a fair and full statement of all his accounts and liabilities as such, pursuant to Code Section 36-6-20, an exoneration of himself and his sureties, together with the details of such settlement, must be entered on the minutes of the county governing authority. It shall be final, except for fraud. (Orig. Code 1863, § 542; Code 1868, § 606; Code 1873, § 565; Code 1882, § 565; Civil Code 1895, § 471; Civil Code 1910, § 587; Code 1933, § 23-1023.)

JUDICIAL DECISIONS

Provisions of former Civil Code 1910, §§ 586 and 587 (see O.C.G.A. §§ 36-6-20 and 36-6-21) were not applicable to annual accounting and settlement made by the tax collector with the county commissioners. Read v. Glynn County, 145 Ga. 881, 90 S.E. 60 (1916).

Cited in Board of Comm'rs v. Massachusetts Bonding Ins. Co., 175 Ga. 584, 165 S.E. 828 (1932).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, §§ 205, 206.

36-6-22. Requirement of accountings by treasurer.

It shall be the duty of the judge of the probate court or county governing authority to compel the treasurers of the county to come before the court or governing authority at such times as may be designated by the judge or governing authority, not less than twice in each year, to render an account of his official actings and doings respecting the county tax and funds and to make a full and complete exhibit of his books, vouchers, accounts, and all things pertaining to his office. (Ga. L. 1882-83, p. 82, § 1; Civil Code 1895, § 418; Civil Code 1910, § 527; Code 1933, § 23-1024; Ga. L. 1982, p. 3, § 36.)

JUDICIAL DECISIONS

Power of commissioners to require appearance. — Under former Civil Code 1910, §§ 527 and 528 (see O.C.G.A. §§ 36-6-22 and 36-6-23), the board of commissioners of roads and revenues has authority to require the tax collector to appear before the board at stated times to render an account of the collector's official actings. Edmondson v. Glenn, 153 Ga. 401, 112 S.E. 366 (1922).

In a proceeding under former Civil Code 1910, § 527 (see O.C.G.A. § 36-6-22) or former Civil Code 1910, § 528 (see O.C.G.A. § 48-5-140), the ordinary (now judge of the probate court) acted in a judicial or quasi-judicial capacity. Riner v. Flanders, 173 Ga. 43, 159 S.E. 693 (1931).

36-6-23. Proceedings upon failure of treasurer to render accounting.

The failure or refusal of any county treasurer to render the account and make the showing provided for by Code Section 36-6-22, after being notified to do so by the county governing authority, shall constitute malpractice in office. A conviction therefor shall subject the offender to removal from office. During the continuance of such failure or refusal after the notice aforesaid, the county governing authority shall suspend the treasurer from duty and shall appoint some fit and proper person to take charge of the county funds and perform the duties of his office until the question of his removal can be passed upon and decided by the proper tribunal. Proper bonds shall be taken from the person so appointed, as provided by law. The power given by this Code section and Code Section 36-6-22 to inquire into the affairs of the treasurer of the county and to suspend him from office in certain cases shall in no way affect the liability of the treasurer or that of the sureties on his bond. (Ga. L. 1882-83, p. 82, § 2; Civil Code 1895, § 419; Civil Code 1910, § 528; Code 1933, § 23-1025.)

JUDICIAL DECISIONS

Cited in Pitts Banking Co. v. Sherman, 166 Ga. 495, 143 S.E. 581 (1928).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, §§ 198, 199.

36-6-24. Removal of treasurer.

County treasurers may be removed from office in the same manner as clerks of the superior courts may be removed. (Laws 1821, Cobb's 1851 Digest, p. 211; Laws 1838, Cobb's 1851 Digest, p. 215; Code 1863, § 518;

Code 1868, § 582; Code 1873, § 544; Code 1882, § 544; Civil Code 1895, § 450; Civil Code 1910, § 566; Code 1933, § 23-1026.)

Cross references. — Removal of clerks of superior courts, § 15-6-82.

OPINIONS OF THE ATTORNEY GENERAL

Finding of incapacity and removal. — Judge of the superior court can remove the current county treasurer from office after a jury finding of incapacity, pursuant to O.C.G.A. §§ 15-6-82 and 36-6-24. 1985 Op. Att'y Gen. No. U85-30.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 165 et seq.

C.J.S. — 20 C.J.S., Counties, § 168 et seq. 67 C.J.S., Officers and Public Employees, § 148 et seq.

36-6-25. Filling of vacancies.

Vacancies in the office of county treasurer shall be filled as are vacancies in other county offices. (Orig. Code 1863, § 519; Code 1868, § 583; Code 1873, § 545; Code 1882, § 545; Civil Code 1895, § 451; Civil Code 1910, § 567; Code 1933, § 23-1027.)

OPINIONS OF THE ATTORNEY GENERAL

How construed. — Language "vacancies are filled as vacancies in other county offices" should be construed to mean how a majority of vacancies in county offices are filled and, of course, this leads to the provisions provided for the filling of vacancies in the office of clerk of the superior court. 1957 Op. Att'y Gen. p. 58.

Hold-over prevents a vacancy. 1957 Op. Att'y Gen. p. 58.

Appointment of interim officer until special election held. — Vacancies in offices of tax commissioner, tax receiver, tax collector, sheriff, treasurer, and coroner were, pursuant to former Code 1933, §§ 24-2707 and 24-2709 (see O.C.G.A. § 15-6-54 (now repealed)), to be filled by appointment of an interim officer by a judge of probate court wherein vacancy occurred until special election could be held according to former Code 1933, §§ 24-2704 and 24-2705 (see O.C.G.A. § 15-6-56(a) (now repealed)), unless local law specifically created position of "chief deputy clerk" for "any such office," in which case, former Code 1933, §§ 24-2704 and 24-2705 (see O.C.G.A. § 15-6-56(c) (now repealed)) should apply. 1981 Op. Att'y Gen. No. 81-87.

Procedure in event of incapacity of county treasurer. — There appears to be no Code provision authorizing the appointment of an "acting" county treasurer to serve in place of the elected treasurer until an incapacity of the current official ends. 1985 Op. Att'y Gen. No. U85-30.

Judge of the probate court can appoint a qualified person to carry out the duties of county treasurer if an incapacity has been established. If the vacancy is to last more than six months (and prior to the time for the regular election of the county treasurer), the probate court then would have to call for a special election to fill the unexpired term of the former county treasurer, pursuant to O.C.G.A. §§ 15-6-54(b) (now repealed) and 15-6-56 (now repealed). 1985 Op. Att'y Gen. No. U85-30.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 88, 105 et seq.
C.J.S. — 20 C.J.S., Counties, § 163. 67 C.J.S., Officers and Public Employees, § 100 et seq.

36-6-26. Bonds of persons appointed to fill vacancies.

The amount of the bonds of appointees to fill vacancies shall be in the discretion of the county governing authority, taking into consideration the amount that may come into their hands, and shall be for double such amount. (Orig. Code 1863, § 524; Code 1868, § 588; Code 1873, § 550; Code 1882, § 550; Civil Code 1895, § 457; Civil Code 1910, § 573; Code 1933, § 23-1028.)

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 160. 67 C.J.S., Officers and Public Employees, § 61.

36-6-27. Execution against county treasurer for failure to pay over money.

When the county treasurer at any time fails to pay any order which is entitled to payment, any other legal demand upon him, or any balance that is in his hands to his successor or to the person entitled to receive it, the county governing authority may issue execution against him and his sureties for the amount due, as against a defaulting tax collector. (Laws 1825, Cobb's 1851 Digest, p. 212; Code 1863, § 540; Code 1868, § 604; Code 1873, § 563; Code 1882, § 563; Civil Code 1895, § 469; Civil Code 1910, § 585; Code 1933, § 23-1611.)

JUDICIAL DECISIONS

Inclusion of attorney's fees unconstitutional. — Former Code 1933, § 23-1611 (see O.C.G.A. § 36-6-27), insofar as the statute authorized a board of commissioners to include in an execution attorney's fees under former Code 1933, § 91A-3183 (see O.C.G.A. § 48-5-201), was unconstitutional and void because it was violative of U.S. Const., amend. 14, and Ga. Const. 1976, Art. I, Sec. I, Para. I (see Ga. Const. 1983, Art. I, Sec. I, Para. I), in that no provision was made giving the county treasurer and the sureties on the treasurer's bond an opportunity to be heard as to the amount or reasonableness of such fees, and the law does not otherwise provide for any method of attack thereon. Former Code 1933, § 23-1611 was further unconstitutional and void because in violation of Ga. Const. 1976, Art. I, Sec. II, Paras. I and IV (see Ga. Const. 1983, Art. I, Sec. II, Paras. I and III), in that the determination of what attorney's fees incurred were reasonable and the assessment of such fees were judicial functions and could not be delegated to an administrative official. Massachusetts Bonding & Ins. Co. v. Floyd County, 178 Ga. 595, 173 S.E. 720 (1934).

Relation to other sections. — Provisions of former Civil Code 1910, § 1187 (see O.C.G.A. § 48-5-201), relating to is-

suance of executions against defaulting county tax collectors and their bondsmen, were by former Civil Code 1910, § 585 (see O.C.G.A. § 36-6-27) made applicable to the issuance of executions against defaulting county treasurers and their bondsmen. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459 (1931).

Liability of official charged with custody of public funds greater than that of mere bailee. Lamb v. Dart, 108 Ga. 602, 34 S.E. 160 (1899).

Power of ordinary (now judge of the probate court) to cite treasurer to appear for settlement of accounts. — Under former Code 1873, §§ 337, 553 and 563 (see O.C.G.A. §§ 36-6-14, 36-6-27 and 36-5-1 (since repealed)), the ordinary (now judge of the probate court) had jurisdiction to cite the county treasurer to appear before the ordinary for a settlement of the treasurer's accounts, as well as to order moneys in the treasurer's hands to be paid out by the treasurer to the proper persons, and upon the treasurer's failure to issue execution for such default. Smith v. Outlaw, 64 Ga. 677 (1880).

Power to issue execution against defaulting county treasurer was vested in the ordinary (now judge of the probate court), or in county commissioners if the fiscal affairs of the county were administered by the commissioners. Arthur v. Commissioners of Gordon County, 67 Ga. 220 (1881); Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287 (1915).

Execution authorized against absconding treasurer. — Ordinary (now judge of the probate court) is authorized to issue execution against an absconding county treasurer for money in the treasurer's hands. Jones v. Collier, 65 Ga. 553 (1880).

Execution to be issued in name of county. — Execution provided by this section against a defaulting county treasurer should be issued in the name of the county; but if issued in the name of the ordinary (now judge of the probate court) for the use of the county, such irregularity is an amendable defect, and does not render the process void. Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287 (1915) (see O.C.G.A. § 36-6-27).

Notice in writing not required. — It is not necessary that notice in writing be given before the issuing of the execution provided in this section. Price v. Douglas County, 77 Ga. 163, 3 S.E. 240 (1887); Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287 (1915) (see O.C.G.A. § 36-6-27).

Execution is issued summarily, and defendant then has the right to test questions involved by trial by jury. A defendant who has had a full and complete trial after the issuance of execution has no cause to complain that the defendant did not have it before. Arthur v. Commissioners of Gordon County, 67 Ga. 220 (1881).

Liability of treasurer on bank's insolvency. — When a county treasurer, in making an accounting with the treasurer's successor, delivers a check representing public funds which the treasurer has in a bank, and the same is accepted in lieu of cash, and upon the acceptance and presentation of such check by the payee, credit therefor is transferred by the bank to the new treasurer, and the fact that the bank may be insolvent at the time of such transaction does not necessarily show a default by the officer making such accounting. In equity the transaction should be treated as a transfer of money to the extent of the amount which the bank could and would have paid in cash, if cash had been demanded. Board of Comm'rs v. Massachusetts Bonding & Ins. Co., 175 Ga. 584, 165 S.E. 828 (1932).

Arrest of execution. — Execution by a county against the treasurer and the treasurer's surety must be construed to have been issued under this section; and having been so issued, the execution cannot be arrested by affidavit of illegality. Board of Comm'rs v. Massachusetts Bonding & Ins. Co., 175 Ga. 584, 165 S.E. 828 (1932) (see O.C.G.A. § 36-6-27).

Remedy by affidavit of illegality not applicable to treasurers. — By Ga. L. 1915, §§ 1-3 (see O.C.G.A. § 48-5-203), the law in relation to issuance of executions against county tax collectors was so amended as to afford a remedy by affidavit of illegality, but that Act did not extend so far as to afford such remedy to county treasurers and the treasurers' bondsmen. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459 (1931).

Interest. — In proceeding under this section, the county, having collected and used money which actually belonged to the plaintiff, is chargeable with interest the same as any other person would have been. United States Fid. & Guar. Co. v. Clarke, 190 Ga. 46, 8 S.E.2d 52 (1940) (see O.C.G.A. § 36-6-27).

Interest charged against both principal and surety. — Former Civil Code 1910, §§ 585 and 1187 (see O.C.G.A. §§ 36-6-27 and 48-5-201) drew no distinction between the principal and surety in regard to payment of interest, but the interest specified in the statute was to be charged against both the principal and surety. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459 (1931).

36-6-28. Purchase of county orders at less than full value or refusal to pay order.

Any county treasurer who buys up any county orders or claims for less than their full par value, either by himself or by agents, directly or indirectly, pays for them in property at an estimated value above its true value, refuses to pay an order when he has funds to pay the same, or illegally postpones the payment of an order shall be guilty of a misdemeanor and shall be removed from office on complaint and proof being made to the county governing authority. (Orig. Code 1863, §§ 535, 536; Code 1868, §§ 599, 600; Code 1873, §§ 561, 562; Code 1882, §§ 561, 562; Civil Code 1895, § 468; Penal Code 1895, § 276; Civil Code 1910, § 584; Penal Code 1910, § 280; Code 1933, §§ 23-1609, 23-9902.)

JUDICIAL DECISIONS

Defect in title no defense. — Fact that the person from whom the treasurer bought the orders did not have good title is not a defense. Wilder v. State, 47 Ga. 522 (1873).

Treasurer may purchase warrants. — Under this section, county orders or warrants may be sold, and the county treasurer personally is permitted to purchase a warrant, provided the treasurer pays full value therefor. Southern Ry. v. Fulton County, 170 Ga. 248, 152 S.E. 567 (1930) (see O.C.G.A. § 36-6-28).

Accessory parties. — As this section provides for a misdemeanor, and there are no accessories in misdemeanors, all who knowingly participate in the criminal act, and all who procure, counsel, command, aid, or abet the commission of a misdemeanor are regarded by the law as the principal offenders, and may be indicted as such. Blalock v. State, 40 Ga. App. 242, 149 S.E. 297 (1929) (see O.C.G.A. § 36-6-28).

Indictment. — To authorize a conviction under this section, it is necessary for the indictment to allege that the accused is a county treasurer or acts in an official capacity equal to a county treasurer if a county has no such office. Blalock v. State, 40 Ga. App. 242, 149 S.E. 297 (1929) (see O.C.G.A. § 36-6-28).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 123.

CHAPTER 7

COUNTY SURVEYOR

Sec.
36-7-1. Requirement of county surveyor for each county; appointment of assistants or deputies.
36-7-2. Election, commissioning, qualification, and removal of county surveyor; qualifications.
36-7-2.1. Abolishing elected office and authorizing appointment; qualifications of appointed surveyor.
36-7-3. Procedure when election fails to fill office; procedure in event of vacancy.
36-7-4. Commissioning of surveyor.
36-7-5. Oath of office; bond and security.
36-7-6. Oath of assistant; entry of appointment of assistant on minutes of probate court.
36-7-7. Place of office.
36-7-8. Duties of surveyor generally.
36-7-9. Establishment of fees.
36-7-10. Payment of fees generally.
36-7-11. Issuance of execution for fees.
36-7-12. Surveys or plats deemed presumptive evidence of facts.
36-7-13. Persons who may perform duties of office when there is no county surveyor; oath; liability.
36-7-14. Appointment of disinterested surveyor; oath.
36-7-15. Removal of surveyor from office.
36-7-16. Penalty for making false survey.

Cross references. — Determination of land boundaries generally, T. 44, C. 4.

36-7-1. Requirement of county surveyor for each county; appointment of assistants or deputies.

There must be one county surveyor for each county. The surveyor is empowered to appoint one or more assistants or deputies, for whose conduct he is responsible. (Laws 1783, Cobb's 1851 Digest, p. 665; Laws 1784, Cobb's 1851 Digest, p. 670; Code 1863, § 548; Code 1868, § 612; Code 1873, § 571; Code 1882, § 571; Civil Code 1895, § 478; Civil Code 1910, § 596; Code 1933, § 23-1105.)

36-7-2. Election, commissioning, qualification, and removal of county surveyor; qualifications.

(a) County surveyors shall be elected, commissioned, qualified, and removed as are clerks of the superior courts and shall hold their offices for four years.

(b)(1) Every person holding the post of county surveyor must be a qualified surveyor, licensed by the State Board of Registration for Professional Engineers and Land Surveyors, and such person must have successfully passed the examination given by the board as a

prerequisite to the granting of a license as a land surveyor; provided, however, that any person holding the position of county surveyor on March 7, 1966, whether elected or appointed, shall not be required to meet the qualifications enumerated in this subsection so long as such person remains in the position of county surveyor, whether reappointed or reelected to this position.

(2) Paragraph (1) of this subsection shall not apply to:

(A) Any county having a population of less than 17,000 inhabitants according to the United States decennial census of 1960 or any future such census; or

(B) Any person who was holding the position of county surveyor in such a county on January 1, 1977, and who has acted continuously as county surveyor since that date, for as long as such person remains in the position of county surveyor, notwithstanding the fact that the population of the county has grown to exceed 17,000.

(c) Notwithstanding the provisions of subsection (b) of this Code section or paragraph (3) of subsection (b) of Code Section 43-15-29, a county surveyor who is not licensed by the State Board of Registration for Professional Engineers and Land Surveyors shall only practice land surveying for the county and shall not engage in the private practice of professional land surveying; provided, however, that this subsection shall not apply to any county surveyor duly elected and holding office on June 30, 1986, so long as said person continues to hold the office of county surveyor; provided, however, that any county surveyor who has a minimum of four years of surveying experience shall be eligible to take the land surveyor examination and eligible for certification as a land surveyor. (Laws 1799, Cobb's 1851 Digest, p. 198; Code 1863, § 543; Code 1868, § 607; Code 1873, § 566; Code 1882, § 566; Civil Code 1895, § 473; Civil Code 1910, § 591; Code 1933, § 23-1101; Ga. L. 1966, p. 225, §§ 1, 4, 5; Ga. L. 1986, p. 888, § 1; Ga. L. 1988, p. 555, § 1.)

Cross references. — Election, qualifications, duties, powers, and compensation of county officers, Ga. Const. 1983, Art. IX, Sec. I, Para. III. Removal of clerks of superior courts, § 15-6-82.

JUDICIAL DECISIONS

Cited in Philpot v. Wells, 69 Ga. App. 489, 26 S.E.2d 155 (1943).

OPINIONS OF THE ATTORNEY GENERAL

Surveyor not subject to city business license. — County surveyor who makes surveys, other than those made by an order of the ordinary (now judge of the

probate court) or court, is not subject to a city business license. 1958-59 Op. Att'y Gen. p. 371.

Applicability to one serving at time of enactment. — Any person who held the position of county surveyor on March 7, 1966 (the date this section was approved) could serve as county surveyor regardless of whether the person was licensed as a surveyor by the State Board of Registration for Professional Engineers and Land Surveyors so long as the person's service in that office was continuous. 1968 Op. Att'y Gen. No. 68-509.

Construed with § 36-7-9 and § 43-15-7. — County surveyor who is not registered by the State Board of Registration for Professional Engineers and Land Surveyors may not, under any authority, engage in the private practice of land surveying outside of the county in which the surveyor was elected; nor may the surveyor engage in the private practice of land surveying in the county of election unless the surveyor was duly elected and holding office on June 30, 1986, and has continued, uninterrupted, to hold such office. 1990 Op. Att'y Gen. No. 90-13.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 164 et seq. 67 C.J.S., Officers and Public Employees, § 46.

36-7-2.1. Abolishing elected office and authorizing appointment; qualifications of appointed surveyor.

(a) The General Assembly may by local law abolish the office of elected county surveyor in any county of this state and authorize the governing authority of the county to appoint the county surveyor for such term of office as the General Assembly shall provide by said local law.

(b) A local law abolishing the office of elected county surveyor pursuant to the authority of this Code section shall comply with the provisions of Code Section 1-3-11 requiring referendum approval on abolishing certain offices, except that if the office of the elected county surveyor is vacant at the time of its abolishment or if the person holding the office was appointed to fill a vacancy pursuant to the provisions of Code Section 36-7-3, such office may be abolished at any time without the necessity of a referendum.

(c) A county surveyor appointed by a county governing authority pursuant to the authority of a local Act enacted pursuant to the provisions of this Code section shall possess the qualifications to hold office as a county surveyor specified by paragraph (1) of subsection (b) of Code Section 36-7-2 and shall carry out the duties of a county surveyor as provided in this chapter and other laws of this state. (Code 1981, § 36-7-2.1, enacted by Ga. L. 1989, p. 919, § 1; Ga. L. 1993, p. 91, § 36.)

36-7-3. Procedure when election fails to fill office; procedure in event of vacancy.

(a) Whenever an election fails to fill the office of county surveyor, the judge of the probate court shall appoint a person to serve as the county surveyor until a successor is duly elected in a special election which shall be held at the time of the next general election to serve out the remainder of the unexpired term of office.

(b) In the event that a vacancy occurs in the office of county surveyor, the judge of the probate court shall appoint a person to serve for the unexpired term of office and until his successor is duly elected and has qualified. (Orig. Code 1863, § 544; Code 1868, § 608; Code 1873, § 567; Code 1882, § 567; Civil Code 1895, § 474; Civil Code 1910, § 592; Code 1933, § 23-1102; Ga. L. 1969, p. 350, § 1; Ga. L. 1988, p. 586, § 3.)

Editor's notes. — Ga. L. 1988, p. 586, § 7, not codified by the General Assembly, provided that the 1988 amendment of this Code section applied to any vacancy occurring on or after March 30, 1988.

JUDICIAL DECISIONS

Cited in Williams v. Richmond County, 241 Ga. 89, 243 S.E.2d 55 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Authority of judge of the probate court. — Former Code 1933, §§ 21-101 and 21-102 (see O.C.G.A. §§ 45-16-1 and 45-16-2), when read in light of former Code 1933, § 23-1102 (see O.C.G.A. § 36-7-3), designated the judge of the probate court as the proper authority to fill vacancies occurring in the county office of coroner absent special laws directing that this function be fulfilled by some other authority. 1978 Op. Att'y Gen. No. 78-58.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 163 et seq. 67 C.J.S., Officers and Public Employees, §§ 47, 100 et seq.

36-7-4. Commissioning of surveyor.

A county surveyor who derives his authority from appointment needs no commission beyond the order of the judge of the probate court entered on his minutes, of which appointment the Governor must be informed without delay. (Orig. Code 1863, § 545; Code 1868, § 609; Code 1873, § 568; Code 1882, § 568; Civil Code 1895, § 475; Civil Code 1910, § 593; Code 1933, § 23-1103.)

36-7-5. Oath of office; bond and security.

In addition to the oath required of all public officers, the county surveyor must take the following oath before entering on the duties of his office:

> "I, _____, swear that I will, to the best of my skill and knowledge, discharge the duties of surveyor of _____ County and that I will not admeasure, survey, or lay out any land, in my capacity as such, or knowingly permit or cause it to be done, without a warrant first obtained for that purpose. So help me God."

At the same time, he shall give bond and security in the sum of $1,000.00. (Laws 1847, Cobb's 1851 Digest, p. 217; Code 1863, § 546; Code 1868, § 610; Code 1873, § 569; Code 1882, § 569; Civil Code 1895, § 476; Civil Code 1910, § 594; Code 1933, § 23-1104.)

Cross references. — Oaths required of public officers, T. 45, C. 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 124, 130 et seq., 351 et seq., 359, 363, 492, 493.

C.J.S. — 20 C.J.S., Counties, §§ 159, 160. 67 C.J.S., Officers and Public Employees, § 59 et seq.

36-7-6. Oath of assistant; entry of appointment of assistant on minutes of probate court.

When an assistant is appointed by the county surveyor, he must take the same oath the county surveyor takes. The fact of his appointment must, at the same time, be entered on the minutes of the judge of the probate court. (Orig. Code 1863, § 549; Code 1868, § 613; Code 1873, § 572; Code 1882, § 572; Civil Code 1895, § 479; Civil Code 1910, § 597; Code 1933, § 23-1106.)

36-7-7. Place of office.

The county surveyor may keep his office at his place of abode, if within the limits of the county. The county shall not be required to furnish the county surveyor with an office or facilities. (Orig. Code 1863, § 550; Code 1868, § 614; Code 1873, § 573; Code 1882, § 573; Civil Code 1895, § 480; Civil Code 1910, § 598; Code 1933, § 23-1107; Ga. L. 1966, p. 225, § 2.)

36-7-8. Duties of surveyor generally.

It shall be the duty of the county surveyor:

(1) To observe punctually and carry into effect all such orders as he may receive from any officer who may lawfully command him;

(2) To partition lands, to make resurveys, to give plats of all surveys, and to administer all oaths required by law in such cases;

(3) To survey county lines and district lines and to make other surveys in which his county may be interested whenever required to do so by the county governing authority;

(4) To execute all surveys required by the rule or order of any court of competent jurisdiction; and

(5) To keep a well-bound book in which shall be entered plats of all surveys made by him with a minute of the names of the chainbearers, when executed, by whose order, and to whom the plat was delivered, if any. Such book shall belong to his office and shall be turned over to his successor; when full, it shall be deposited in the office of the county governing authority. (Laws 1783, Cobb's 1851 Digest, p. 668; Laws 1785, Cobb's 1851 Digest, p. 672; Laws 1838, Cobb's 1851 Digest, p. 215; Code 1863, § 551; Code 1868, § 615; Code 1873, § 574; Code 1882, § 574; Civil Code 1895, § 481; Civil Code 1910, § 599; Code 1933, § 23-1108; Ga. L. 1987, p. 3, § 36.)

Cross references. — Duties of county surveyor relating to surveys for homestead purposes, §§ 44-13-5, 44-13-6, 44-13-11, 44-13-12, 44-13-102, 44-13-103.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Boundaries, § 46 et seq.

C.J.S. — 20 C.J.S., Counties, § 207.

ALR. — Partition: division of building, 28 ALR 727.

36-7-9. Establishment of fees.

(a) The county surveyor shall be allowed to establish a reasonable fee for each of the following acts:

(1) Surveying a town lot and returning a certificate thereof;

(2) Surveying a tract of land;

(3) Making a plat and recording, advertising, and transmitting the same to the Secretary of State's office;

(4) Making a resurvey of land by order of court;

(5) For every other survey, making and certifying a plat thereof and transmitting the same;

(6) Running lines between counties or districts or making new lines, per day, the county surveyor furnishing the chainbearer and provisions;

(7) Making a plat of homestead, affidavit, and return;

(8) Making each additional plat where there is more than one lot; and

(9) Making any other survey he may be called upon or required to perform.

The fee established by the county surveyor shall be reasonably equivalent to the same fee which would be charged if the survey had been conducted by a private surveyor.

(b) The county surveyor shall be allowed to contract for his services in the same manner as private surveyors, whenever he is called upon or required to make a survey for a private or a corporate benefit or by order of the county governing authority or by order of the court. (Laws 1792, Cobb's 1851 Digest, p. 350; Code 1863, § 3626; Code 1868, § 3651; Ga. L. 1870, p. 68, § 1; Code 1873, § 3702; Code 1882, § 3702; Civil Code 1895, § 490; Civil Code 1910, § 608; Code 1933, § 23-1109; Ga. L. 1966, p. 225, §§ 3, 5; Ga. L. 1968, p. 1413, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Construction. — County surveyor who is not registered by the State Board of Registration for Professional Engineers and Land Surveyors may not, under any authority, engage in the private practice of land surveying outside of the county in which the surveyor was elected; nor may the surveyor engage in the private practice of land surveying in the surveyor's county of election unless the surveyor was duly elected and holding office on June 30, 1986, and has continued, uninterrupted, to hold such office. 1990 Op. Att'y Gen. No. 90-13.

No conflict with other sections. — There does not appear to be any conflict between former Code 1933, §§ 23-1109 and 85-1610 (see O.C.G.A. §§ 36-7-9 and 44-4-10), but even if there were one, former Code 1933, §§ 23-1109 being based upon a more recent statute, would apparently govern. 1971 Op. Att'y Gen. No. U71-45.

36-7-10. Payment of fees generally.

The fees for surveys made by the county surveyor for private or corporate benefit shall be paid by the person or corporation ordering the survey. The fees for surveys made by order of the county governing authority shall be paid out of county funds. The fees for surveys made by order of court, unless otherwise agreed upon, are to be taxed in the bill of costs and shall have the effect of a judgment lien upon the land surveyed, if not paid by the party bound for costs. (Orig. Code 1863, § 552; Code 1868, § 616; Code 1873, § 575; Code 1882, § 575; Civil Code 1895, § 482; Civil Code 1910, § 600; Code 1933, § 23-1110.)

JUDICIAL DECISIONS

Cost of survey. — When the plaintiffs sought an injunction restraining the defendant from closing a roadway running across the defendant's property to the plaintiff's property, the court did not err in taxing against the plaintiffs as a part of the costs, $128.00 incurred in making a survey ordered by the court. In an equity case, the court has the right to place the costs upon either of the parties, and this section definitely makes the cost of survey a part of the court costs. Nelson v. Girard, 215 Ga. 518, 111 S.E.2d 60 (1959) (see O.C.G.A. § 36-7-10).

OPINIONS OF THE ATTORNEY GENERAL

Surveyor not subject to city business license. — County surveyor who makes surveys, other than those made by an order of the ordinary (now judge of the probate court) or court, is not subject to a city business license. 1958-59 Op. Att'y Gen. p. 371.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, §§ 69, 76.

36-7-11. Issuance of execution for fees.

A county surveyor who makes a survey for a person who neglects to pay him may make oath before the judge of the probate court of his county of the performance of such service and its value. The judge of the probate court shall thereupon issue a fi. fa. in his name for the use of the surveyor, against the person defaulting. Such person may defend himself therefor in the same manner as persons against whom executions issue for detaining county funds. (Orig. Code 1863, § 554; Code 1868, § 618; Code 1873, § 577; Code 1882, § 577; Civil Code 1895, § 483; Civil Code 1910, § 608; Code 1933, § 23-1111.)

Cross references. — Filing of affidavit of illegality by person against whom execution has been issued for holding county money, § 48-5-239.

JUDICIAL DECISIONS

Section provides remedy for collection of fee. — Former Code 1933, § 23-1111 (see O.C.G.A. § 36-7-11), taken in connection with former Code 1933, § 91A-1219 (see O.C.G.A. § 48-5-239), provided a remedy for a county surveyor to collect the surveyor's fees for official services rendered, and also a way for the defendant to test the correctness of the claim. Webb v. Stephens, 57 Ga. App. 395, 195 S.E. 577 (1938).

OPINIONS OF THE ATTORNEY GENERAL

Judge must issue execution. — This section is clear and unambiguous and makes it the duty of the ordinary (now judge of the probate court) to issue a fi. fa.

when the surveyor has complied with the provisions of this section. 1960-61 Op. Att'y Gen. p. 87 (see O.C.G.A. § 36-7-11).

36-7-12. Surveys or plats deemed presumptive evidence of facts.

Surveys or plats of lands within his county, made by the county surveyor under order of court and on notice to all the parties, signed by him officially, and stating the contents, courses, and distances of any land surveyed by him are presumptive evidence of the facts if all the requisites of the law touching such surveys and the reports thereof are complied with. (Orig. Code 1863, § 555; Code 1868, § 619; Code 1873, § 578; Code 1882, § 578; Civil Code 1895, § 484; Civil Code 1910, § 602; Code 1933, § 23-1112.)

JUDICIAL DECISIONS

Admissibility of official survey. — Surveys or plats made pursuant to the requirements of this section are presumptive evidence of the facts set out therein. McClung v. Schulte, 214 Ga. 426, 105 S.E.2d 225 (1958) (see O.C.G.A. § 36-7-12).

Survey made by others than county surveyor is not admissible in evidence, unless proved by parties who made the survey; the affidavit of such persons on the survey is not sufficient proof, and such affidavit, the persons making the survey not being sworn as witnesses in the pending trial, cannot be received as evidence of anything on that trial. Maples v. Hoggard, 58 Ga. 315 (1877).

Admissibility of unofficial survey. — Plat that did not show that it was purported to have been made by authority since it was shown to have been made before the city charter was ever issued did not meet the requirements of law of either former Code 1933, § 23-1112 or former Code 1933, § 38-312 (see O.C.G.A. § 36-7-12 or O.C.G.A. § 24-3-11), and could not be used in evidence without other testimony or evidence. Central of Ga. Ry. v. City of Metter, 222 Ga. 74, 148 S.E.2d 661 (1966).

In an ejectment action, a plat introduced by the party bringing the action is not presumptive evidence of the facts set out in the plat, when there is no evidence that the plat is an official survey under this section. Costello v. Styles, 227 Ga. 650, 182 S.E.2d 427 (1971) (see O.C.G.A. § 36-7-12).

Unofficial surveys are admissible when proved to be correct. McClung v. Schulte, 214 Ga. 426, 105 S.E.2d 225 (1958).

Unofficial survey is admissible in evidence when proved to have been corrected by the parties who made the survey. Lewis v. Carr, 177 Ga. 761, 171 S.E. 298 (1933).

Plat or survey is not admissible as substantive, presumptive evidence of facts set forth therein, unless it conforms to provisions of this section, but upon being verified by oral testimony as correct, the plat or survey may be admitted for the purpose of illustrating other competent testimony. Woodard v. Bowen, 213 Ga. 185, 97 S.E.2d 573 (1957) (see O.C.G.A. § 36-7-12).

County tax plats admissible. — In an action to quiet title to real property, county tax plats used as evidence of the ownership of the depicted property were admissible. Resseau v. Bland, 268 Ga. 634, 491 S.E.2d 809 (1997).

Survey not made under order of court so as to make plat admissible under this section is admissible as an official document for whatever it may have been worth as a pictorial representation of conditions found on the ground by the surveyor. Gilman Paper Co. v. James, 235 Ga. 348, 219 S.E.2d 447 (1975) (see O.C.G.A. § 36-7-12).

Unofficial survey does not meet the statutory requirements of this section. However, an unofficial but properly verified survey is admissible for whatever weight the jury attaches to the survey. Johnson v. Jones, 242 Ga. 319, 249 S.E.2d 30 (1978) (see O.C.G.A. § 36-7-12).

Effect of oral testimony. — Unless a survey of plat is of official origin and meets the requirements of this section, it carries no presumptive value as evidence of the facts, although, if verified by oral testimony, it is admissible as a part of and as illustrative of such oral testimony for whatever that testimony may be worth. R.G. Foster & Co. v. Fountain, 216 Ga. 113, 114 S.E.2d 863 (1960) (see O.C.G.A. § 36-7-12).

Plat prepared by the county surveyor, which the surveyor identified as one prepared at the request of parties to the litigation, but not one which is shown to conform to the requirements of this section is admissible in evidence as a part of and illustrative of the oral testimony of the surveyor. Fendley v. Weaver, 121 Ga. App. 526, 174 S.E.2d 369 (1970) (see O.C.G.A. § 36-7-12).

Witness as to correctness of survey. — In principle it would seem to be immaterial whether the witness who proposes to testify to the correctness of an unofficial survey be the surveyor, or one who was present at the time the survey was made, if the witness offers to testify to the correctness of the survey. Lewis v. Carr, 177 Ga. 761, 171 S.E. 298 (1933).

Cited in Arnold v. Shackelford, 219 Ga. 839, 136 S.E.2d 384 (1964); Minor v. Ray, 122 Ga. App. 531, 177 S.E.2d 842 (1970); Fountain v. Bryan, 229 Ga. 120, 189 S.E.2d 400 (1972); Sutton v. City of Cordele, 230 Ga. 681, 198 S.E.2d 856 (1973); Clark v. Stafford, 239 Ga. App. 69, 522 S.E.2d 6 (1999); Ware v. Rutledge, 240 Ga. App. 355, 523 S.E.2d 411 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Boundaries, § 95 et seq.

36-7-13. Persons who may perform duties of office when there is no county surveyor; oath; liability.

(a) When there is no county surveyor, any person who is a citizen of this state and who holds a current and valid certificate of registration as a land surveyor issued by the State Board of Registration for Professional Engineers and Land Surveyors may perform the duties of county surveyor, when specifically required or appointed to do so, if first sworn to do the same faithfully and impartially, to the best of his skill and knowledge.

(b) Persons performing such service are on the same footing as county surveyors as to the special service rendered and are personally liable as such surveyors are officially liable. (Orig. Code 1863, §§ 556, 557; Code 1868, §§ 620, 621; Code 1873, §§ 579, 580; Code 1882, §§ 579, 580; Civil Code 1895, §§ 485, 486; Civil Code 1910, §§ 603, 604; Code 1933, §§ 23-1113, 23-1114; Ga. L. 1973, p. 636, § 1.)

Cross references. — Certification of land surveyors by State Board of Registration for Professional Engineers and Land Surveyors, T. 43, C. 15.

JUDICIAL DECISIONS

Section mandatory upon processioners. — Upon application to processioners to mark anew a dividing line, the surveyor, where there is no county surveyor, must be chosen and qualified as provided by statute. Watkins v. Sailers, 65 Ga. App. 77, 15 S.E.2d 306 (1941).

Oath mandatory. — When a private surveyor is selected and performs the duties required of a county surveyor without first having taken the oath required under this section, the return of the processioners is void. Watkins v. Sailers, 65 Ga. App. 77, 15 S.E.2d 306 (1941) (see O.C.G.A. § 36-7-13).

Cited in Irby v. Raley, 88 Ga. App. 807, 78 S.E.2d 72 (1953).

36-7-14. Appointment of disinterested surveyor; oath.

When any county surveyor is interested in any survey to be made, the judge of the superior court or the judge of the probate court of the county in which the land is located, upon the application of any party in interest, shall appoint a competent, disinterested surveyor or, in his discretion, may appoint the surveyor of any adjoining county to make the survey. If the surveyor appointed is not a county surveyor, before entering on the survey, he shall subscribe before some judicial officer of the county the oath required of county surveyors. The rights, powers, and duties of the surveyor so appointed shall be the same as those of the county surveyor. The return of the surveyor shall have the same force and effect as do other surveys. (Ga. L. 1882-83, p. 104, §§ 1, 2; Civil Code 1895, §§ 487, 488; Civil Code 1910, §§ 605, 606; Code 1933, §§ 23-1115, 23-1116.)

JUDICIAL DECISIONS

Cited in Irby v. Raley, 88 Ga. App. 807, 78 S.E.2d 72 (1953); Poss v. Guy, 212 Ga. 393, 93 S.E.2d 565 (1956).

36-7-15. Removal of surveyor from office.

The county surveyor, whether elected or appointed, may be removed by the judge of the probate court for want of capacity, in the same fashion as clerks of the superior courts are removed in the superior court. This cause of removal shall be in addition to the causes which apply to all public officers. (Orig. Code 1863, § 547; Code 1868, § 611; Code 1873, § 570; Code 1882, § 570; Civil Code 1895, § 477; Civil Code 1910, § 595; Code 1933, § 23-1117.)

Cross references. — Removal of clerks of superior courts, § 15-6-82.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 170, 173, 178 et seq.

C.J.S. — 20 C.J.S., Counties, § 168 et seq.

36-7-16. Penalty for making false survey.

Any county surveyor or other person acting as such who knowingly surveys nonvacant land as vacant land or makes any other false survey shall be guilty of a misdemeanor. (Orig. Code 1863, § 558; Code 1868, § 622; Code 1873, § 581; Code 1882, § 581; Civil Code 1895, § 489; Penal Code 1895, § 278; Civil Code 1910, § 607; Penal Code 1910, § 282; Code 1933, § 23-9903.)

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, §§ 198, 199.

CHAPTER 8

COUNTY POLICE

Sec.		Sec.	
36-8-1.	Election or appointment of county police; qualifications.	36-8-5.	Powers of county police generally.
36-8-2.	Terms of office; removal; authority to abolish county police force.	36-8-6.	Inspection of and reports on roads and bridges [Repealed].
36-8-3.	Bonds and actions thereon.	36-8-7.	Rules and regulations for conduct, management, and control of county police.
36-8-4.	Establishment of salaries; payment; tax levy.		

Cross references. — Police power of counties, generally, Ga. Const. 1983, Art. IX, Sec. II, Para. III(a)(1).

JUDICIAL DECISIONS

No change in general law. — Nothing in this chapter (especially Ga. L. 1914, p. 142, § 6 (see O.C.G.A. § 36-8-3)) which authorizes the appointment of county police officers, insofar as the statute may undertake to fix the liability of the sureties upon a county officer's bond, changes the general law as contained in former Civil Code 1910, § 291 (see O.C.G.A. § 45-4-24). Hodge v. United States Fid. & Guar. Co., 42 Ga. App. 84, 155 S.E. 95 (1930).

Cited in Levine v. Perry, 204 Ga. 323, 49 S.E.2d 820 (1948); Barge v. Camp, 209 Ga. 38, 70 S.E.2d 360 (1952); Thompson v. Hornsby, 235 Ga. 561, 221 S.E.2d 192 (1975).

36-8-1. Election or appointment of county police; qualifications.

(a) The county governing authority shall have authority to elect or appoint such number of county police as in its discretion it deems proper, provided that the county governing authority complies with the provisions of this Code section. Any person elected or appointed to the county police shall possess the qualifications prescribed in Code Section 35-8-8.

(b)(1) Each county governing authority may authorize, through proper resolution or ordinance, the creation of a county police force. No resolution or ordinance adopted pursuant to this paragraph shall become effective until the governing authority of the county has submitted to the qualified electors of the county the question of whether the resolution or ordinance shall be approved or rejected. The county governing authority shall establish the date of the election in compliance with Code Section 21-2-540, which shall be not less than 30 days after the call of the election, and shall notify the county election superintendent of its decision as to the date. The

election superintendent shall issue the call for the election and shall specify that the election shall be held on the date determined by the county governing authority. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of the county. The ballot shall have written or printed thereon the following:

"( ) YES Shall the resolution or ordinance adopted by the governing authority of (Name of County) to create a
( ) NO county police force be approved?"

(2) Those persons desiring to vote in favor of the creation of a county police force shall vote "Yes," and those persons opposed to the creation of a county police force shall vote "No." If more than one-half of the votes cast on the question are in favor of the creation of a county police force, then the county governing authority shall be authorized to create a county police force pursuant to the provisions of this chapter; otherwise, a county police force shall not be created. If the resolution or ordinance is rejected by the qualified electors, the question of the creation of a county police force may not again be submitted to the voters of the county within 48 months immediately following the month in which such election was held. The county election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections, except as otherwise provided in paragraph (1) of this subsection. He shall canvass the returns and declare and certify the result of the election to the Secretary of State. The expense of any such election shall be borne by the county wherein the election was held.

(c) The provisions of subsection (b) shall not apply to any county which has created a county police force prior to January 1, 1992, which county police force remains in existence and operational.

(d) Any county police force created by a county governing authority between January 1, 1992, and February 25, 1992, shall be abolished no later than December 31, 1992, unless, prior to said latter date, a resolution or ordinance authorizing the creation of a county police force is adopted by the county governing authority and approved by the qualified electors of the county in a special election as provided in subsection (b) of this Code section. (Ga. L. 1909, p. 156, § 1; Civil Code 1910, § 849; Ga. L. 1914, p. 142, § 1; Code 1933, § 23-1401; Ga. L. 1992, p. 324, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "February 25, 1992," was substituted for "the effective date of this Code section" in subsection (d).

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Applicability. — This chapter applies to all counties of the state. Eison v. Shirley, 165 Ga. 374, 141 S.E. 295 (1927) (see O.C.G.A. Ch. 8, T. 36).

Effect on powers of sheriff. — Even when a county police force is established, the power and authority of the sheriff to enforce the law and preserve the peace are not legally diminished. Wolfe v. Huff, 232 Ga. 44, 205 S.E.2d 254 (1974).

Power to direct owner from burning building. — Under the police power, a deputy sheriff is authorized to go upon private property and direct the owner to move back from a burning building, when the deputy has been made aware of the possibility of an explosion, and in the deputy's opinion the safety of a 2½-year-old child was unnecessarily endangered because of the proximity to the burning structure. Veit v. State, 182 Ga. App. 753, 357 S.E.2d 113 (1987).

County marshals acting as police force. — O.C.G.A. § 36-8-1(b)(1) referendum requirement was inapplicable to a county which created a county police force before January 1, 1992, which remained in existence and operational; however, in the context of a suit seeking injunctive and declaratory relief regarding whether the Fayette County, Georgia, Marshal's Department was a valid police force, fact issues remained, and summary judgment was improper, when affidavits claimed that county marshals did not operate as a county police force during the relevant time period. Johnson v. Fayette County, 280 Ga. 493, 635 S.E.2d 35 (2006).

Cited in Cloud v. DeKalb County, 70 Ga. App. 777, 29 S.E.2d 441 (1944); Levine v. Perry, 204 Ga. 323, 49 S.E.2d 820 (1948).

OPINIONS OF THE ATTORNEY GENERAL

Power not delegable to grand jury. — County commissioners may use a grand jury to advise the commissioners on selection of police, but the commissioners may not delegate their authority to appoint police to a grand jury. 1960-61 Op. Att'y Gen. p. 79.

Qualifications of sheriff as police officer. — When a county police department is established and the law enforcement functions of the sheriff are transferred to such department, the sheriff or the sheriff's deputies may not become members of the police department so as to exercise the police power. 1970 Op. Att'y Gen. No. U70-28.

Creation of marshal's office did not establish police force. — County marshal's office is not equivalent to a county police force and, therefore, when a county did not establish a police force when the county created a marshal's office, the governing authority must comply with the requirements of subsection (b) of O.C.G.A. § 36-8-1 before creating a county police force. 1995 Op. Att'y Gen. No. U95-14.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police and Constables, § 12.

C.J.S. — 20 C.J.S., Counties, § 164 et seq.

ALR. — Validity, construction, and application of enactments relating to requirement of residency within or near specified governmental unit as condition of continued employment for policemen or firemen, 4 ALR4th 380.

36-8-2. Terms of office; removal; authority to abolish county police force.

The terms for which county police shall be elected or appointed shall be left to the discretion of the county governing authority. Such county

police or any member thereof may be removed from office at any time, at the will of the county governing authority, with or without cause. A resolution or ordinance authorizing the creation of a county police force adopted by a county governing authority and approved by the qualified electors of the county in a special election as provided in subsection (b) of Code Section 36-8-1 shall not affect the power of the county governing authority to abolish a county police force at any time. (Ga. L. 1909, p. 156, § 7; Civil Code 1910, § 855; Ga. L. 1914, p. 142, § 7; Code 1933, § 23-1407; Ga. L. 1992, p. 324, § 2.)

JUDICIAL DECISIONS

Validity of special law. — Even though a general law provides the manner for discharging county police by the county commissioners, a special law relating to this subject in a county is valid. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414 (1966).

Cited in Levine v. Perry, 204 Ga. 323, 49 S.E.2d 820 (1948); Wolfe v. Huff, 232 Ga. 44, 205 S.E.2d 254 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Qualifications of sheriff as police officer. — When a county police department is established and the law enforcement functions of the sheriff are transferred to such department, the sheriff or the sheriff's deputies may not become members of the police department so as to exercise the police power. 1970 Op. Att'y Gen. No. U70-28.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 16 et seq.

C.J.S. — 20 C.J.S., Counties, § 161 et seq.

ALR. — Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion, removal or suspension from duty, 9 ALR4th 614.

36-8-3. Bonds and actions thereon.

Upon the election of county police, each of them shall enter into a good and solvent bond, in a sum of not less than $1,000.00, to be fixed by the county governing authority, conditioned for the faithful performance of all their duties. Anyone injured or damaged by any one of such county police may bring an action upon his bond in his name or in the name of the county governing authority for his benefit or use. (Ga. L. 1909, p. 156, § 6; Civil Code 1910, § 854; Ga. L. 1914, p. 142, § 6; Code 1933, § 23-1406.)

Law reviews. — For article on bond liability and righting the wrongs of Georgia local government officers, see 13 Ga. L. Rev. 747 (1979).

JUDICIAL DECISIONS

No change in general law. — Nothing in this chapter (especially Ga. L. 1914, p. 142, § 6 (see O.C.G.A. § 36-8-3)), which authorizes the appointment of county police officers, insofar as the statute may undertake to fix the liability of the sureties upon a county officer's bond, changes the general law as contained in former Civil Code 1910, § 291 (see O.C.G.A. § 45-4-24). Hodge v. United States Fid. & Guar. Co., 42 Ga. App. 84, 155 S.E. 95 (1930).

Bond refers only to official duties. — Bond required of a county police officer, wherein it is conditioned for the faithful performance by the officer of the officer's duties, has reference only to those duties which are incident to the office of county policeman, and not to those general duties incumbent upon every person as a member of society. Hodge v. United States Fid. & Guar. Co., 42 Ga. App. 84, 155 S.E. 95 (1930).

Cited in Levine v. Perry, 204 Ga. 323, 49 S.E.2d 820 (1948).

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 14

C.J.S. — 20 C.J.S., Counties, § 160.

ALR. — Right of individual to maintain action on bond of peace officer, 19 ALR 73.

Liability on bond of sheriff or other peace officer for unlawful search, 62 ALR 855.

36-8-4. Establishment of salaries; payment; tax levy.

The county governing authority shall fix the salaries of the county police, which salaries, together with the expense of maintaining the police, shall be paid out of the county treasury. The county governing authority is authorized to levy such tax as may be necessary to pay such salaries and expenses over and above the sums for which it is otherwise authorized to levy a tax. (Ga. L. 1909, p. 156, § 2; Civil Code 1910, § 850; Ga. L. 1914, p. 142, § 2; Code 1933, § 23-1402.)

Cross references. — Authority of counties to exercise power of taxation, Ga. Const. 1983, Art. IX, Sec. IV, Paras. I-III.

JUDICIAL DECISIONS

Commission from still destruction unauthorized. — Under this section, the ordinary (now judge of the probate court) is without authority to appoint a police officer under an agreement by which the police officer is to be paid for work done in enforcing the prohibition law by destroying stills, and for which the police officer is to be paid so much for each still destroyed, to be paid out of the funds derived by fines and forfeitures from the enforcement of the prohibition law. If such work or service is rendered under a contract which the ordinary (now judge of the probate court) is not authorized to make, no implied obligation arises on the part of the county to pay for such services, even though the county receives the benefit. Eison v. Shirley, 165 Ga. 374, 141 S.E. 295 (1927) (see O.C.G.A. § 36-8-4).

Receipt of salary no bar to action for share of fees. — Fact that officer making seizure of an automobile engaged in the illegal transportation of intoxicating liquors received a salary does not preclude the officer from receiving the

officer's part of fees provided by statute for officers responsible for confiscation of such automobiles. Cloud v. DeKalb County, 70 Ga. App. 777, 29 S.E.2d 441 (1944).

Cited in Levine v. Perry, 204 Ga. 323, 49 S.E.2d 820 (1948).

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 40 et seq.

36-8-5. Powers of county police generally.

Under the direction and control of the county governing authority, the county police shall have:

(1) The same power to make arrests and to execute and return criminal warrants and processes in the county of their election or appointment only, as sheriffs have; and

(2) All the powers of sheriffs as peace officers in the county of their election or appointment. (Ga. L. 1909, p. 156, § 3; Civil Code 1910, § 851; Ga. L. 1914, p. 142, § 3; Code 1933, § 23-1403; Ga. L. 1961, p. 217, § 1.)

JUDICIAL DECISIONS

Grant of power to Jekyll Island-State Park Authority not exclusive. — This section does not give Jekyll Island-State Park Authority exclusive police power, including law enforcement on Jekyll Island nor does the statute prohibit Glynn County police from exercising the powers granted the county officers by this section. Ferguson v. Leggett, 226 Ga. 333, 174 S.E.2d 913 (1970) (see O.C.G.A. § 36-8-5).

Duties and powers of deputy sheriff. — Office of sheriff carries with the office the duty to preserve the peace and protect the lives, persons, property, health, and morals of the people, and a deputy sheriff is an agent of the sheriff and in effecting the proper discharge of the deputy's duties is empowered with the same duties and powers. Veit v. State, 182 Ga. App. 753, 357 S.E.2d 113 (1987).

Warrantless arrest outside territorial limits. — Deputy sheriff had authority to make a warrantless arrest beyond the territorial limits of the deputy's own county. Watkins v. State, 207 Ga. App. 766, 430 S.E.2d 105 (1993), overruled on other grounds; West v. Waters, 272 Ga. 591, 533 S.E.2d 88 (2000).

Effect on powers of sheriff. — Even when a county police force is established, the power and authority of the sheriff to enforce the law and preserve the peace is not legally diminished. Wolfe v. Huff, 232 Ga. 44, 205 S.E.2d 254 (1974).

Fact that officers are outside jurisdiction does not make officers private citizens. — Fact that state officers making a warrantless search were, at the time of the search, outside of the officers' state-granted jurisdiction does not make such officers, thereby, merely private citizens so as to enable the federal government to freely use anything that was discovered by the state officers as evidence in a federal prosecution which would otherwise have been inadmissible. United States v. Hogue, 283 F. Supp. 846 (N.D. Ga. 1968).

Cited in Stone v. National Sur. Corp., 57 Ga. App. 427, 195 S.E. 905 (1938); McCarty v. State, 152 Ga. App. 726, 263 S.E.2d 700 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Powers of arrest. — Arresting powers of county police are confined by this section to the county of appointment or election. 1960-61 Op. Att'y Gen. p. 62 (see O.C.G.A. § 36-8-5).

Power to arrest on state property. — Within the limits of their respective territorial or statutory jurisdiction, local law enforcement authorities may arrest offenders upon state property for violations of state laws, including property under the jurisdiction of the Georgia Building Authority Police. 1992 Op. Att'y Gen. No. 92-6.

Power to return prisoner from outside county. — County police under former Code 1933, § 23-1403 (see O.C.G.A. § 36-8-5) were authorized to go from the county of appointment to another county within the limits of the state to receive a prisoner who was under arrest and detention and return such prisoner to the county of appointment, according to former Code 1933, § 27-209 (see O.C.G.A. § 17-4-25). 1958-59 Op. Att'y Gen. p. 73.

Misdemeanor cases. — County police officer has the same authority as the sheriff in those cases once the defendant is arrested under a warrant charging a misdemeanor, so long as the prisoner is in the police officer's custody; if the county police officer turns the prisoner over to the sheriff without bail, it would thereafter be the responsibility of the sheriff to accept bail. 1962 Op. Att'y Gen. p. 63.

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 30 et seq.

C.J.S. — 20 C.J.S., Counties, §§ 196, 207.

ALR. — Degree of force that may be employed in arresting one charged with a misdemeanor, 42 ALR 1200.

36-8-6. Inspection of and reports on roads and bridges.

Reserved. Repealed by Ga. L. 2005, p. 529, § 1/HB 557, effective May 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1909, p. 156, § 4; Civil Code 1910, § 852; Ga. L. 1914, p. 142, § 4; Code 1933, § 23-1404.

Ga. L. 2012, p. 775, § 36/HB 942, reserved the designation of this Code section, effective July 1, 2012.

36-8-7. Rules and regulations for conduct, management, and control of county police.

Upon the election or appointment of county police, the county governing authority shall make rules and regulations for the conduct, management, and control of such county police and shall, from time to time, enlarge, modify, or change such rules and regulations as its discretion may dictate. (Ga. L. 1909, p. 156, § 5; Civil Code 1910, § 853; Ga. L. 1914, p. 142, § 5; Code 1933, § 23-1405.)

JUDICIAL DECISIONS

Cited in Levine v. Perry, 204 Ga. 323, 49 S.E.2d 820 (1948); Wolfe v. Huff, 232 Ga. 44, 205 S.E.2d 254 (1974).

RESEARCH REFERENCES

ALR. — Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 ALR4th 614.

CHAPTER 9

COUNTY PROPERTY GENERALLY

Sec.		Sec.	
36-9-1.	Vesting in county of title under conveyances for use of county.	36-9-5.	Erection, repair, and furnishing of county buildings; storage of county documents.
36-9-2.	Control and disposal of county property generally.	36-9-6.	Courthouse rooms to be used by county officers.
36-9-2.1.	Demolition of certain county courthouses.	36-9-7.	Furnishing of supplies for county offices.
36-9-3.	Sale or disposition of county real property generally; right of certain counties to make private sale; right of county to negotiate and consummate private sales of recreational set-asides.	36-9-8.	Protection of county property by sheriff.
		36-9-9.	Construction of county jails.
		36-9-10.	Inspection of county buildings, property, and records by grand jury [Repealed].
36-9-4.	Maintenance of insurance on books of laws and court reports.	36-9-11.	Destruction or damaging of any county building or its appurtenances or furniture.

Cross references. — Exercise of power of eminent domain by counties for purposes of construction and operation of watershed projects, flood-control projects, and other projects, § 22-3-100 et seq.

36-9-1. Vesting in county of title under conveyances for use of county.

All deeds, conveyances, grants, or other instruments which have been or may be made to any officer or person for the use and benefit of any county shall vest in the county the title as fully as if made to the county by name. (Orig. Code 1863, § 466; Code 1868, § 528; Code 1873, § 494; Code 1882, § 494; Civil Code 1895, § 347; Civil Code 1910, § 395; Code 1933, § 91-601.)

JUDICIAL DECISIONS

Titling of automobiles. — Trial court properly granted summary judgment to the board of county commissioners after a wrongful death action was filed against the county arising out of a collision involving the ambulance the employee was driving on an emergency call and the decedent's vehicle; even if the ambulance was titled in the name of the board of county commissioners, the law regarded the ambulance as being titled in the name of the county and the county, not the board of county commissioners, was the proper defendant when liability was based on respondeat superior. Smith v. Bulloch County Bd. of Comm'rs, 261 Ga. App. 667, 583 S.E.2d 475 (2003).

Cited in McElmurray v. Richmond County, 223 Ga. 47, 153 S.E.2d 427 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Property of county boards of education. — Former Code 1933, §§ 91-601 and 91-102 et seq. (see O.C.G.A. §§ 36-9-1 and 50-16-1 et seq.) were not applicable to property belonging to county boards of education. 1958-59 Op. Att'y Gen. p. 107.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 470.

C.J.S. — 20 C.J.S., Counties, § 219.

36-9-2. Control and disposal of county property generally.

The county governing authority shall have the control of all property belonging to the county and may, by order entered on its minutes, direct the disposal of any real property which may lawfully be disposed of and make and execute good and sufficient title thereof on behalf of the county. (Orig. Code 1863, § 467; Code 1868, § 529; Code 1873, § 495; Code 1882, § 495; Civil Code 1895, § 348; Civil Code 1910, § 396; Code 1933, § 91-602; Ga. L. 1935, p. 110, § 1.)

JUDICIAL DECISIONS

No disposal without legislative authority. — As a general proposition of law a county cannot, without legislative authority, dispose of real estate owned by the county. Head v. Lee, 203 Ga. 191, 45 S.E.2d 666 (1947).

Power not necessarily exclusive. — This section does not vest in the ordinary (now judge of the probate court) exclusive power of sale of the county's property when the General Assembly confers such powers upon county commissioners of a particular county. Dyer v. Martin, 132 Ga. 445, 64 S.E. 475 (1909) (decided prior to revision of section by Ga. L. 1935, p. 110, § 1; see O.C.G.A. § 36-9-2).

Authority for sale. — Proper resolution, duly recorded, is the authority by which the county's title for land may be divested by deed. Head v. Lee, 203 Ga. 191, 45 S.E.2d 666 (1947).

In the absence of a recorded order authorizing the conveyance in question, or subsequent ratification of the deed, the purported conveyance by the county did not pass the county's title for the land therein described. Head v. Lee, 203 Ga. 191, 45 S.E.2d 666 (1947).

When order not on minutes. — When county commissioners authorize a conveyance of land brought in by the county at a tax sale, but fail to put the order of authorization on the minutes, as required by this section, it is competent for the commissioners at a subsequent meeting of the board to ratify the deed to the purchaser from the county, and to cause the authorization to be put on the minutes. Braswell v. Palmer, 191 Ga. 262, 11 S.E.2d 889 (1940) (see O.C.G.A. § 36-9-2).

Tax sale not authorized. — Fact that a purported sale of county-owned property was by tax sale did not operate to negate or otherwise nullify the requirements of O.C.G.A. § 36-9-2. West v. Fulton County, 267 Ga. 456, 479 S.E.2d 722 (1997).

County commissioner is a public officer occupying a fiduciary relationship requiring the commissioner to exercise the utmost good faith, fidelity, and integrity in dealing with county property as a trustee and servant of the people, which the commissioner may not sell without legislative sanction unless the property's use shall have been abandoned by or become unserviceable to the county. If county property be sold by the commissioner, the commissioner shall obtain the

most advantageous price. Timbs v. Straub, 216 Ga. 451, 117 S.E.2d 462 (1960).

County property which has become unserviceable may be sold by order of the county commissioners at private sale. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173 (1952).

Property becomes unserviceable, within the meaning of this section, when the property cannot be beneficially or advantageously used under all circumstances for county purposes. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173 (1952).

Denial or change of use of property. — County board of commissioners has right to deny use of any public property if the property is used in a wasteful or ineffective manner. Wheeler v. DeKalb County, 249 Ga. 678, 292 S.E.2d 855 (1982).

When public property is a building constructed from funds of a designated bond issue for a particular use, the board of commissioners may change the intended use of the building when circumstances which gave rise to the bond issue change so that the building constructed from those funds is no longer needed for that purpose, and the property's continued use for that purpose would be a waste of county resources. Wheeler v. DeKalb County, 249 Ga. 678, 292 S.E.2d 855 (1982).

Sheriff had power to modify county-owned property within exclusive use. — County sheriff had the independent authority to repaint and remark county-owned sheriff's vehicles assigned to the sheriff's exclusive use, but lacked the authority to modify portions of a county-owned building in which the sheriff's office and jail were housed, as the facility was shared with the superior, state, and magistrate courts of Clayton County, as well as the clerks of those courts, the solicitor general, and the district attorney, and hence, not under the sheriff's exclusive use. As a result, subject to compliance with O.C.G.A. § 40-8-91, summary judgment in favor of the county as to the extent of the sheriff's authority was reversed as to the former, but affirmed as to the latter. Hill v. Clayton County Bd. of Comm'rs, 283 Ga. App. 15, 640 S.E.2d 638 (2006).

Sale of undivided interest. — This section does not warrant the sale of an undivided one-fifth of a courthouse and lot in actual daily use for county purposes. Hunnicutt v. City of Atlanta, 104 Ga. 1, 30 S.E. 500 (1898) (decided prior to revision of section by Ga. L. 1935, p. 110, § 1; see O.C.G.A. § 36-9-2).

Lease for ninety-nine years. — Commissioners cannot lease county property in such manner as to put the property out of the power of the county authorities for 99 years to devote the property to the exclusive use of the county. Equity will enjoin use under such a lease. Town of Decatur v. DeKalb County, 130 Ga. 483, 61 S.E. 23 (1908) (decided prior to revision of section by Ga. L. 1935, p. 110, § 1).

Applicability to lease. — When a lease of county property ran on a month-to-month basis, giving the lessee only a usufruct with no estate passing out of the county, this section is inapplicable since there was no conveyance of county property. Overlin v. Boyd, 598 F.2d 423 (5th Cir. 1979) (see O.C.G.A. § 36-9-2).

Nature of duty. — When a local law gives a board of commissioners exclusive jurisdiction in governing and controlling county property, the commissioners have the duty to maintain control over county property, but this duty coexists with the duty to exercise that control in the manner the commissioners deem most beneficial to the county. Smith v. Board of Comm'rs, 244 Ga. 133, 259 S.E.2d 74 (1979).

Usufruct of airport. — Contract by a county granting a usufruct of an airport to a private corporation for a period of years is not a disposition of county property requiring the antecedent resolution of county authorities. Southern Airways Co. v. DeKalb County, 102 Ga. App. 850, 118 S.E.2d 234 (1960).

Power of commissioners. — Those county officers who by virtue of their office have charge of the county affairs may, by proper order to be entered on their minutes, direct the disposal of and execute good and sufficient title to lands belonging to the county which are not necessary for public use. Head v. Lee, 203 Ga. 191, 45 S.E.2d 666 (1947).

Ordinary (now judge of the probate court) had power to lease directly to an

individual certain realty for use in operating a filling station as it was then being and had been used for 13 years. Such a lease, having been so executed by the ordinary (now county governing authority) was not void on the ground that the lease was not authorized by law, or that the interest thereby created extended beyond the term of the ordinary (now judge of the probate court) then in office, or that the lease amounted to a commercial transaction in which the county was not authorized by law to engage. Black v. Forsyth County, 193 Ga. 571, 19 S.E.2d 297 (1942).

Signature on deed. — If the county commissioners authorize the sale of county land, the deed may lawfully be signed by the chair in the name of the board. Braswell v. Palmer, 191 Ga. 262, 11 S.E.2d 889 (1940).

Statute of limitation. — As the object of O.C.G.A. § 36-9-2 is to give information to the public, the statute of limitation in O.C.G.A. § 9-3-22 was inapplicable because the action arose from a claim that a public officer had failed to perform the officer's official duty. Dade County v. Miami Land Co., 253 Ga. 776, 325 S.E.2d 750 (1985).

Cited in Atlanta Title & Trust Co. v. Tidwell, 173 Ga. 499, 160 S.E. 620 (1931); Turner v. Johnston, 183 Ga. 176, 187 S.E. 864 (1936); Mayor of Fort Valley v. Levin, 183 Ga. 837, 190 S.E. 14 (1937); McDonald v. Marshall, 185 Ga. 438, 195 S.E. 571 (1938); Clayton v. Taylor, 223 Ga. 346, 155 S.E.2d 387 (1967); Shoemaker v. Department of Transp., 240 Ga. 573, 241 S.E.2d 820 (1978); Building Auth. v. State, 253 Ga. 242, 321 S.E.2d 97 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Ability of county commissioners to lease county property. — See 1977 Op. Att'y Gen. No. U77-3.

Permit to build sewer across street. — County commissioners may grant to a private corporation a permit to construct a sewer across a street dedicated to the county. 1970 Op. Att'y Gen. No. U70-36.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 485 et seq.

C.J.S. — 20 C.J.S., Counties, § 223 et seq.

36-9-2.1. Demolition of certain county courthouses.

(a) Notwithstanding the provisions of Code Section 36-9-2, a county governing authority shall not have the authority to demolish or to provide for the demolition of a county courthouse which was constructed prior to January 1, 1905, and which is listed in the National Register of Historic Places unless the question of whether or not to demolish the courthouse is submitted to the qualified voters of the county for approval or rejection in a referendum called for such purpose.

(b) The ballot in the referendum required by subsection (a) of this Code section shall have written or printed thereon the words:

"( ) YES Shall the demolition of the (Name of County) courthouse, as proposed by the governing authority of
( ) NO (Name of County), be approved?"

(c) A referendum held pursuant to this Code section shall be conducted only in conjunction with a general primary or general election and shall be conducted in accordance with the provisions of Chapter 2 of Title 21, the "Georgia Election Code." (Code 1981, § 36-9-2.1, enacted by Ga. L. 1990, p. 133, § 1.)

36-9-3. Sale or disposition of county real property generally; right of certain counties to make private sale; right of county to negotiate and consummate private sales of recreational set-asides.

(a)(1) Except as otherwise provided in this Code section, the governing authority of any county disposing of any real property of such county shall make all such sales to the highest responsible bidder, either by sealed bids or by auction after due notice has been given. Any such county shall have the right to reject any and all bids or cancel any proposed sale. The governing authority of the county shall cause notice to be published once in the official legal organ of the county or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a legal description of the property to be sold. If the sale is by sealed bids, the notice shall also contain an invitation for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids. If the sale is by auction, the notice shall also contain the conditions of the proposed sale and shall state the date, time, and place of the proposed sale. Bids received in connection with a sale by sealed bidding shall be opened in public at the time and place stated in the legal notice. A tabulation of all bids received shall be available for public inspection following the opening of all bids. All such bids shall be retained and kept available for public inspection for a period of not less than 60 days from the date on which such bids are opened.

(2) This subsection shall not apply to:

(A) Redemption of property held by any county under a tax deed; the granting of easements and rights of way; the sale, conveyance, or transfer of road rights of way; the sale, transfer, or conveyance to any other body politic; and any sale, transfer, or conveyance to a nonprofit corporation in order to effectuate a lease-purchase transaction pursuant to Code Section 36-60-13;

(B) Any option to sell or dispose of any real property belonging to any county of this state if that option was granted by said county prior to March 17, 1959;

(C) The sale of any real property belonging to any county in this state where the proper governing authority of the county advertised the property for ten consecutive days in the newspaper in which the sheriff's advertisements for the county are published, and where the sale was awarded thereafter to the highest and best bidder, in accordance with the terms of the advertisement, and an option given in accordance with the sale for the purchaser who had deposited a part of the purchase price to pay the balance within 365 days from the date of the execution of the option, where the sale was awarded and the option granted prior to May 1, 1961; or

(D) The exchange of real property belonging to any county in this state for other real property where the property so acquired by exchange shall be of equal or greater value than the property previously belonging to the county; provided, however, that within six weeks preceding the closing of any such proposed exchange of real property, a notice of the proposed exchange of real property shall be published in the official organ of the county once a week for four weeks. The value of both the property belonging to the county and that to be acquired through the exchange shall be determined by appraisals and the value so determined shall be approved by the proper authorities of said county.

(b) In any county of the state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census, where the governing authority thereof has established or constituted an advisory commission, board, or authority to study and make recommendations for the future development, use, and sale of county owned property, the governing authority of such county shall have the right, with the advice and approval of such commission, board, or authority, to negotiate and consummate a private sale of any county owned property, notwithstanding the provisions of subsection (a) of this Code section. Where there is no commission, board, or authority established in such county for the particular class or type of property, the governing authority of such county shall nevertheless have the right to negotiate a private sale of any county owned property with the advice and approval of the grand jury.

(c)(1) Any county governing authority and the governing authority of any consolidated government may sell, grant, lease, rent, convey, or transfer any real property owned by the county or consolidated government, including real property dedicated or used as a park or recreation area, to the local board of education or other public educational institution for use as a site for a public school or other educational purpose. Any county governing authority and the governing authority of any consolidated government may sell, grant, convey, or transfer to the local board of education or other public

educational institution licenses, easements, or lesser interests in such real property owned by the county or the consolidated government, including real property dedicated or used as a park or recreation area for such purposes. A county governing authority and the governing authority of any consolidated government are authorized to exchange real property, including real property dedicated or used as a park or recreation area, with the local board of education or other public educational institution for other real property for such purposes. Such a sale, grant, lease, rental, conveyance, or transfer may be made by negotiation between the governing authority and local board of education or other public educational institution without advertisement, bidding, auction, notice, publication, or referendum. This subsection shall not be construed to abrogate or impair any reverter provision or other condition of a sale, grant, conveyance, or transfer of real property to a county governing authority or governing authority of a consolidated government.

(2) Prior to executing any sale, grant, lease, rental, conveyance, or transfer pursuant to the provisions of paragraph (1) of this subsection, the governing authority proposing such action shall hold a public hearing in the immediate vicinity of the affected property. Such hearing shall be advertised by posting conspicuous notice at the place of the hearing and at the affected property. The governing authority shall have at least one representative at the public hearing to receive the comments and concerns expressed and to report such comments and concerns to the governing authority.

(3) After the public hearing provided in paragraph (2) of this subsection but before the action proposed under paragraph (1) of this subsection, the governing authority proposing the action shall hold at least one meeting to discuss the transaction in light of the comments and concerns expressed at the public hearing.

(d) Notwithstanding subsection (a) of this Code section, where the governing authority has, prior to March 1, 1987, approved and recommended the sale or disposal of county owned real property containing an area of less than 20,000 square feet, the governing authority shall have the right to negotiate and consummate a private sale of such property, provided such sale is for at least the fair market value of the property. Notice of the intention of the county governing authority to make a private sale shall be published once a week for four weeks in the official organ of the county.

(e) Notwithstanding subsection (a) of this Code section, where the governing authority has prescribed a system of recreational set-asides where developers are required to set aside a certain amount of property in each new subdivision for recreational purposes and where those recreational set-asides have been conveyed to the county governing

authority at no cost to the county, the county governing authority shall have the right to negotiate and consummate a private sale of such property to a homeowners' association representing the majority of property owners in the subdivision where the recreational set-aside property is located, provided that the use of the property shall be for recreational purposes for a period of not less than five years from the date of the sale. Notice of intention of the county governing authority to make a private sale shall be published once a week for four weeks in the official organ of the county.

(f) Notwithstanding any provision of this Code section to the contrary or any other provision of law or ordinance to the contrary, whenever any county determines that the establishment of a facility of the state or one of its authorities or other instrumentalities would be of benefit to the county, by way of providing activities in an area in need of redevelopment, by continuing or enhancing local employment opportunities, or by other means or in other ways, such county may sell or grant any of its real or personal property to the state or to any of its authorities or instrumentalities and, further, may sell or grant such lesser interests, rental agreements, licenses, easements, and other dispositions as it may determine necessary or convenient. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way.

(g)(1) As used in this subsection, the term "lake" means an impoundment of water in which at least 1,000 acres of land were to be submerged.

(2) Notwithstanding any provision of this Code section or any other law to the contrary, whenever any county has acquired property for the creation or development of a lake, including but not limited to property the acquisition of which was reasonably necessary or incidental to the creation or development of that lake, and the governing authority of such county thereafter determines that all of the property is no longer needed because of a decision by the county to not construct the lake, that county is authorized to dispose of such property or interest therein as provided in this subsection.

(3)(A) In disposing of property, as authorized under this subsection, the county shall notify the owner of such property at the time of its acquisition or, if the tract from which the county acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the county acquired its property. Any notice required pursuant to this subparagraph shall be in writing and delivered to the appropriate owner or by publication if such owner's address is unknown. Such owner shall have the right to acquire such property, as provided in this subsection.

(B) If the original owner of the property at the time of the county's acquisition of such property is deceased, the original owner's spouse, child, or grandchild shall have the first opportunity to purchase the property which the county is disposing of pursuant to this subsection; provided, however, the owner's child shall have such right only if the owner's spouse is deceased or has waived his or her right to purchase the property, and the owner's grandchild shall have such right only if both the owner's spouse and child either are deceased or have waived their right to buy the property. If the original owner's spouse is deceased and the original owner had more than one child or grandchild and such children or grandchildren have a right to purchase the property pursuant to this paragraph, then such children or grandchildren shall be entitled to purchase the property as tenants in common. The county shall place a notice of a sale proposed pursuant to this subparagraph once in the county legal organ. If after 45 days from the date of such publication the original owner's spouse, child, or grandchild has not come forward, or if the tract from which the county acquired its property has been subsequently sold, the county shall notify the owner of abutting land holding title through the owner from whom the county acquired its property as provided in subparagraph (A) of this paragraph. Publication pursuant to this subparagraph, if necessary, shall be in a newspaper of general circulation in the county where the property is located.

(4) When an entire parcel acquired by the county or any interest therein is being disposed of, it may be acquired under the right created in paragraph (3) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition. When only remnants or portions of the original acquisition are being disposed of, they may be acquired for the market value thereof at the time the county decides the property is no longer needed.

(5) If the right of acquisition is not exercised within 60 days after due notice, the county shall proceed to sell such property as provided in subsection (a) of this Code section. The county shall thereupon have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(h) Notwithstanding any provision of this Code section or of any other law, ordinance, or resolution to the contrary, a county governing authority is authorized to sell and convey parcels of small or narrow strips of land, so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development ordinances or land use plans, or as streets, whether owned in fee or used by easement, to abutting property owners where such sales

and conveyances facilitate the enjoyment of the highest and best use of the abutting owner's property without first submitting the sale or conveyance to the process of an auction or the solicitation of sealed bids; provided, however, that each abutting property owner shall be notified of the availability of the property and shall have the opportunity to purchase said property under such terms and conditions as set out by ordinance.

(i)(1) As used in this subsection, the terms "conservation easement" and "holder" shall have the meanings as set forth in Code Section 44-10-2.

(2) Notwithstanding any provision of this Code section or of any other law, ordinance, or resolution to the contrary, whenever the governing authority of any county determines that the establishment of a conservation easement would be of benefit to the county and to its citizens by way of retaining or protecting natural, scenic, or open-space values of real property; assuring the availability of the property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of the property, such governing authority may sell or grant to any holder a conservation easement over any of its real property, including but not limited to any of its real property set aside for use as a park. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way; provided, however, that a conservation easement shall not be created, granted, or otherwise conveyed for the purpose of preventing, frustrating, or interfering with the exercise of the power of eminent domain by any public utility or other entity authorized to exercise the power of eminent domain. (Code 1933, § 91-804.1, enacted by Ga. L. 1959, p. 325, § 1; Ga. L. 1960, p. 1124, § 1; Ga. L. 1961, p. 195, § 1; Ga. L. 1962, p. 65, § 1; Ga. L. 1965, p. 239, § 1; Ga. L. 1971, p. 678, § 1; Ga. L. 1972, p. 560, § 1; Ga. L. 1981, p. 539, § 1; Ga. L. 1982, p. 2107, § 33; Ga. L. 1983, p. 3, § 27; Ga. L. 1987, p. 3, § 36; Ga. L. 1987, p. 1100, § 1; Ga. L. 1988, p. 676, § 1; Ga. L. 1990, p. 877, § 1; Ga. L. 1992, p. 1348, § 1; Ga. L. 1992, p. 1352, §§ 1, 2; Ga. L. 1994, p. 237, § 2; Ga. L. 1998, p. 1036, § 1; Ga. L. 2010, p. 746, § 1/HB 703; Ga. L. 2010, p. 1078, § 1/SB 390.)

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, substituted "of the property is no longer needed because of a decision by the county to not construct the lake" for "or any part of the property or any interest therein is no longer needed for such purposes because of changed conditions" near the end of paragraph (g)(2); and, in paragraph (g)(3), designated the existing provisions as subparagraph (g)(3)(A), in subparagraph (g)(3)(A), substituted the present last two sentences for the former provisions, which read: "The notice shall be in writing delivered to the appropriate owner or by publication if such owner's address is unknown; and such owner shall have the right to acquire, as provided in

this subsection, the property with respect to which the notice is given. Publication, if necessary, shall be in a newspaper of general circulation in the county where the property is located.", and added subparagraph (g)(3)(B). The second 2010 amendment, effective June 4, 2010, added subsection (i).

Cross references. — Disposition of property no longer needed for public road purposes, see T. 32, C. 7.

Code Commission notes. — Ga. L. 1992, p. 1348, § 1, and Ga. L. 1992, p. 1352, § 2, both added a new subsection (g). Pursuant to Code Section 28-9-5, in 1992, the subsection as added by Ga. L. 1992, p. 1352, § 2 was redesignated as subsection (h).

JUDICIAL DECISIONS

Cited in John Doe v. Roe, 234 Ga. 127, 214 S.E.2d 880 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Effect of local constitutional amendment. — A local amendment which allows resale of county real estate upon such terms and conditions as the governing authority of that county shall deem proper supersedes this section. 1976 Op. Att'y Gen. No. U76-52 (see O.C.G.A. § 36-9-3).

County need not follow procedures set forth in this section before conveying unserviceable county property to body corporate and politic. 1980 Op. Att'y Gen. No. U80-43 (see O.C.G.A. § 36-9-3).

Lease of property for school purposes. — Counties and school districts have authority under subsection (c) of O.C.G.A. § 36-9-3 and O.C.G.A. § 20-2-520 to enter into intergovernmental contracts in which the county leases real property to the school board for use as a site for a public school or other educational purpose. 1998 Op. Att'y Gen. No. 98-13.

Applicability to board of education. — This section has no application to sales of property, the title to which is vested in a county board of education. 1958-59 Op. Att'y Gen. p. 107 (see O.C.G.A. § 36-9-3).

Sale of property by county boards of education. — County board of education may convey property no longer needed for school purposes by a private sale. 1982 Op. Att'y Gen. No. 82-31.

Since O.C.G.A. § 20-2-520 vests title to school property in the county boards of education, as opposed to the counties themselves, public sale requirements of O.C.G.A. § 36-9-3, which apply only to county property, do not govern disposition of such property. 1982 Op. Att'y Gen. No. 82-31.

RESEARCH REFERENCES

ALR. — Power of governing body of county to dispose of county real estate in absence of specific statutory authority, 21 ALR2d 722.

36-9-4. Maintenance of insurance on books of laws and court reports.

The officer having charge of the financial affairs of each county shall keep insured, at a fair valuation against loss by fire, all volumes of the public laws and decisions of the Supreme Court and the Court of Appeals which have been furnished to the judge of the probate court and the clerk of the superior court of his county. Such policies of insurance shall be in the name of the county. The premiums therefor

shall be paid out of the funds of the county. In the event of any loss or damage by fire, the county governing authority shall proceed to collect the amount of loss on the policy; when so collected, the proceeds thereof shall be used in supplying new books of the kind lost or injured, insofar as the proceeds may be sufficient to do so. (Ga. L. 1882-83, p. 132, §§ 1, 2; Civil Code 1895, §§ 349, 350; Civil Code 1910, §§ 397, 398; Code 1933, §§ 91-603, 91-604.)

Cross references. — Property insurance, T. 33, C. 32.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 484.

36-9-5. Erection, repair, and furnishing of county buildings; storage of county documents.

(a) It is the duty of the county governing authorities to erect or repair, when necessary, their respective courthouses and jails and all other necessary county buildings and to furnish each with all the furniture necessary for the different rooms, offices, or cells.

(b) The county buildings shall be erected and kept in order and repaired at the expense of the county under the direction of the county governing authority which is authorized to make all necessary contracts for that purpose.

(c)(1) As used in this subsection, the term "county document" means:

(A) Records documenting property rights, deeds, and wills; and

(B) Tax records documenting ownership of property and the latest valuations of property.

(2) A county officer, the county board of tax assessors, or any other officer of the county having the responsibility or custody of any county documents set forth in paragraph (1) of this subsection shall, at night or when the county office is closed, keep such county documents:

(A) In a fireproof safe or vault;

(B) In fireproof cabinets;

(C) On microfilm, pursuant to the standards set forth in Article 6 of Chapter 18 of Title 50, only if a security copy has been sent to the Georgia State Archives;

(D) At a location not more than 100 miles from the county in a data storage and retrieval facility approved by the county govern-

ing authority within the State of Georgia which is in a building or facility which is in compliance with the fire safety standards applicable to archives and record centers as established by the National Fire Protection Association in Standard No. 232, as such standard was adopted on August 11, 1995. If documents are stored outside the county where the documents were created, the government entity shall bear all costs of transporting such documents back to the county of origin for purposes of responding to requests under Article 4 of Chapter 18 of Title 50, relating to inspections of public records. Such documents shall be made available to the requester; or

(E) On any other electronic imaging medium that facilitates retrieval of such documents via electronic means, provided that such medium enables conversion of such documents to future electronic imaging technologies and provided that such custodian creates a daily computer-based backup of all archival documents stored on such medium.

(3) It is the duty of the county governing authorities to furnish the necessary fireproof equipment, microfilming equipment and supplies, or some other safe facility for such county documents.

(4) On and after January 1, 1985, county documents shall be stored only in accordance with the provisions of this subsection. The local fire marshal in each county shall monitor the various county offices in the county to assure compliance with the provisions of this subsection. (Laws 1796, Cobb's 1851 Digest, p. 182; Code 1863, §§ 468, 469; Code 1868, §§ 530, 531; Code 1873, §§ 496, 497; Code 1882, §§ 496, 497; Civil Code 1895, §§ 351, 352; Civil Code 1910, §§ 399, 400; Code 1933, §§ 91-701, 91-702; Ga. L. 1983, p. 653, § 2; Ga. L. 1997, p. 925, § 3; Ga. L. 2012, p. 173, § 1-32/HB 665.)

The 2012 amendment, effective July 1, 2012, in paragraph (c)(2), deleted "or" at the end of subparagraph (c)(2)(C), substituted "; or" for a period at the end of subparagraph (c)(2)(D), and added subparagraph (c)(2)(E).

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Authority exclusively granted to county. — Authority granted under O.C.G.A. § 36-9-5(a) is given exclusively to the county and is not shared with the city. Therefore, the county does not need the city's approval before condemning property within the city limits when, as here, the condemnation is reasonably necessary to provide a public service. Brunswick Landing, LLC v. Glynn County, 301 Ga. App. 288, 687 S.E.2d 271 (2009), cert. denied, No. S10C0558, 2010 Ga. LEXIS 246 (Ga. 2010).

Power of commissioners. — County commissioners with power to levy and tax also have the power to act under this

section. Dunn v. O'Neill, 144 Ga. 823, 88 S.E. 190 (1916) (see O.C.G.A. § 36-9-5).

Authority to levy tax. — Ordinary (now judge of the probate court) had the power to levy an extra tax to carry into effect the provisions of this section, without the recommendation of the grand jury, but the order levying such extra tax should clearly and distinctly state the object and purpose for which the tax is levied. Barlow v. Ordinary of Sumter County, 47 Ga. 639 (1873) (see O.C.G.A. § 36-9-5).

Discretion of county officers. — Necessities of the various counties in regard to these matters are to be determined by the peculiar conditions surrounding each county; and, therefore, the sound judgment of the county authorities in each case must be relied upon to provide the public with proper buildings on the one hand, and to protect the taxpayer from useless and unnecessary burdens in regard to such matters on the other. Commissioners of Habersham County v. Porter Mfg. Co., 103 Ga. 613, 30 S.E. 547 (1898).

Authority to build courthouse. — Local Act giving board of commissioners jurisdiction over county matters authorizes the board of commissioners to contract for building of county courthouse. Matthews v. Hussey, 148 Ga. 526, 97 S.E. 437 (1918).

Officers having jurisdiction of county affairs are not deprived of all discretion by this section as to the manner of providing a courthouse or the character of the building or the building's equipment. On that subject the county authorities have broad discretion, which should not be disturbed by the courts except cautiously, nor unless it is clear and manifest that the county authorities are abusing the discretion vested in the authorities by law. Manry v. Gleaton, 164 Ga. 402, 138 S.E. 777 (1927); Cowart v. Manry, 166 Ga. 612, 144 S.E. 21 (1928) (see O.C.G.A. § 36-9-5).

Power to donate to chamber of commerce. — When the applicable revenue statutes were construed together with Ga. Const. 1976, Art. III, Sec. VIII, Para. XII and Art. IX, Sec. V, Para. I (see, now, Ga. Const. 1983, Art. III, Sec. VI, Para. VI and Art. IX, Sec. IV), it was held that the statutes did not confer power or authority on a county board of commissioners to donate county funds derived from taxation or from other sources to a chamber of commerce, freight bureau, or convention and tourist bureau even if such donations were intended to accomplish a lawful purpose. Atlanta Chamber of Commerce v. McRae, 174 Ga. 590, 163 S.E. 701 (1932).

Sheriff had power to modify county-owned property within exclusive use. — County sheriff had the independent authority to repaint and remark county-owned sheriff's vehicles assigned to the sheriff's exclusive use, but lacked the authority to modify portions of a county-owned building in which the sheriff's office and jail were housed, as the facility was shared with the superior, state, and magistrate courts of Clayton County, as well as the clerks of those courts, the solicitor general, and the district attorney, and hence, not under the sheriff's exclusive use. As a result, subject to compliance with O.C.G.A. § 40-8-91, summary judgment in favor of the county as to the extent of the sheriff's authority was reversed as to the former, but affirmed as to the latter. Hill v. Clayton County Bd. of Comm'rs, 283 Ga. App. 15, 640 S.E.2d 638 (2006).

County was authorized to exercise the county's right of eminent domain in connection with the expansion of a detention center because the county had jurisdiction over the maintenance of jails in the county under O.C.G.A. § 36-9-5(a), the operation of a jail constituted a public purpose pursuant to Ga. Const. 1983, Art. IX, Sec. II, Para. V, and the property owner did not identify any general law limiting the right of the county to exercise the county's power of eminent domain. Brunswick Landing, LLC v. Glynn County, 301 Ga. App. 288, 687 S.E.2d 271 (2009), cert. denied, No. S10C0558, 2010 Ga. LEXIS 246 (Ga. 2010).

Cited in Atlanta Title & Trust Co. v. Tidwell, 173 Ga. 499, 160 S.E. 620 (1931); Turner v. Johnston, 183 Ga. 176, 187 S.E. 864 (1936); Jackson v. Gasses, 230 Ga. 712, 198 S.E.2d 657 (1973); Wheeler v. DeKalb County, 249 Ga. 678, 292 S.E.2d 855 (1982); Manders v. Lee, 338 F.3d 1304

(11th Cir. 2003); Lawson v. Lincoln County, 292 Ga. App. 527, 664 S.E.2d 900 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Judges' and clerks' offices at courthouse. — Judges of the probate courts and clerks of the superior courts, being constitutional county officers, have a right to maintain their offices in the county courthouse, unless special circumstances make it impractical for judges and clerks to be located there. 1978 Op. Att'y Gen. No. 78-15.

Office of county school superintendent is not required to be located in county courthouse. 1965-66 Op. Att'y Gen. No. 66-31.

Storage of records at home. — It is not proper for a county tax commissioner to store tax records in the commissioner's home. 1975 Op. Att'y Gen. No. U75-75.

Unauthorized poll. — In the absence of any statutory authority, the board of commissioners would not be authorized to expend county funds to conduct an election in the nature of a "straw vote" or public opinion poll to determine whether to construct a new county building. 1968 Op. Att'y Gen. No. 68-70.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 478 et seq.

C.J.S. — 20 C.J.S., Counties, § 221.

ALR. — Applicability of municipal building regulation to state or county buildings, 31 ALR 450.

36-9-6. Courthouse rooms to be used by county officers.

The county governing authority shall designate the rooms in the courthouse to be occupied by each of the county officers and enter the same on its minutes, which it may change from time to time as convenience may require. (Orig. Code 1863, § 470; Code 1868, § 532; Code 1873, § 498; Code 1882, § 498; Civil Code 1895, § 353; Civil Code 1910, § 401; Code 1933, § 91-703.)

JUDICIAL DECISIONS

Public access. — Courthouse is a public building, and as a matter of course the public does not require any permission to enter therein at suitable times and under reasonable regulations. All persons must be allowed equal privileges, both as to access to documents and as to reasonable space within which to transact business incident to the examination of the public records. Atlanta Title & Trust Co. v. Tidwell, 173 Ga. 499, 160 S.E. 620 (1931).

The expression "county officers," as used in this section, refers to those officers who are such in the strict sense of the term - that is, those who are constitutional county officers; and the officers are such, under the provisions of the Constitution, as shall be elected under Ga. Const. 1976, Art. IX, Sec. I, Para. VIII (see, now, Ga. Const. 1983, Art. IX, Sec. I, Para. III). It does not apply to a city court solicitor. Graham v. Merritt, 165 Ga. 489, 141 S.E. 298 (1928) (see O.C.G.A. § 36-9-6).

Justice of the peace (now magistrate) elected by the people is not a "county officer" within the meaning of this section, and therefore is not, as a matter of law or right, entitled to have a room in the courthouse for use as an office

or place of holding court. McDonald v. Marshall, 185 Ga. 438, 195 S.E. 571 (1938) (see O.C.G.A. § 36-9-6).

Cited in Turner v. Johnston, 183 Ga. 176, 187 S.E. 864 (1936); Truesdel v. Freeney, 186 Ga. 288, 197 S.E. 783 (1938).

OPINIONS OF THE ATTORNEY GENERAL

Judges' and clerks' offices at courthouse. — Judges of the probate courts and clerks of the superior courts, being constitutional county officers, have a right to maintain their offices in the county courthouse, unless special circumstances make it impractical for the judges and clerks to be located there. 1978 Op. Att'y Gen. No. 78-15.

36-9-7. Furnishing of supplies for county offices.

It shall be the duty of the county governing authority to furnish fuel, lights, furniture, stationery, records, and office supplies in general for the different county offices of the county, at the expense of the county, provided that this Code section shall apply only to the offices of the officers in the courthouse in the county. (Ga. L. 1901, p. 62, § 1; Civil Code 1910, § 402; Code 1933, § 91-704.)

JUDICIAL DECISIONS

County officer having office in courthouse is entitled to have all office supplies and equipment reasonably necessary to maintain an office in a modern up-to-date manner. Floyd County v. Graham, 24 Ga. App. 294, 100 S.E. 728 (1919).

Telephone included. — Phrase "office supplies in general" is broad enough to include telephone. Floyd County v. Graham, 24 Ga. App. 294, 100 S.E. 728 (1919).

Cited in Turner v. Johnston, 183 Ga. 176, 187 S.E. 864 (1936).

OPINIONS OF THE ATTORNEY GENERAL

County officers generally. — County officer having an office in the courthouse is entitled to have all office supplies and equipment reasonably necessary to maintain an office in a modern up-to-date manner, corresponding with officers of similar character responsible for a like amount of work. 1958-59 Op. Att'y Gen. p. 39.

County governing authority is required to furnish county officials with supplies for their offices. 1960-61 Op. Att'y Gen. p. 68.

Board of education. — It is the responsibility of the county to furnish the offices of the county board of education so long as those officers remain in the courthouse. 1963-65 Op. Att'y Gen. p. 492.

School superintendent. — When a county has provided the county's school superintendent with an office in the county courthouse, the county is required to furnish and equip such office. 1963-65 Op. Att'y Gen. p. 669.

Jail. — County is responsible for keeping and cleaning the jail and for paying for the labor and materials used in such maintenance. 1967 Op. Att'y Gen. No. 67-261.

Costs of forms provided. — County commissioners must bear the cost of printed forms used in recording mortgages. 1948-49 Op. Att'y Gen. p. 39.

Remedy of mandamus. — Proper procedure for a refusal to comply with this section would be by writ of mandamus. 1958-59 Op. Att'y Gen. p. 39 (see O.C.G.A. § 36-9-7).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 260.

36-9-8. Protection of county property by sheriff.

The public grounds and other county property are placed in the keeping of the sheriff of the county, subject to the order of the county governing authority; and it is his or her duty to preserve them from injury or waste and to prevent intrusions upon them. (Orig. Code 1863, § 471; Code 1868, § 533; Code 1873, § 499; Code 1882, § 499; Civil Code 1895, § 354; Civil Code 1910, § 403; Code 1933, § 91-705; Ga. L. 2006, p. 560, § 2/SB 462.)

JUDICIAL DECISIONS

Cited in McDonald v. Marshall, 185 Ga. 438, 195 S.E. 571 (1938); Favors v. State, 104 Ga. App. 854, 123 S.E.2d 207 (1961); Wheeler v. DeKalb County, 249 Ga. 678, 292 S.E.2d 855 (1982); Dorsey v. State, 279 Ga. 534, 615 S.E.2d 512 (2005).

36-9-9. Construction of county jails.

The county jails hereafter constructed shall be of sufficient size and strength to contain and keep securely the prisoners who may be confined therein and shall contain at least two apartments, one for males and one for females, which are properly ventilated so as to secure the health of those confined therein. (Orig. Code 1863, § 473; Code 1868, § 535; Code 1873, § 501; Code 1882, § 501; Civil Code 1895, § 355; Civil Code 1910, § 404; Code 1933, § 91-706.)

Cross references. — Jails generally, T. 42, C. 4. State and county correctional institutions generally, T. 42, C. 5.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 269.

36-9-10. Inspection of county buildings, property, and records by grand jury.

Reserved. Repealed by Ga. L. 1994, p. 607, § 12, effective July 1, 1994.

Editor's notes. — This Code section was based on Orig. Code 1863, § 476; Code 1868, § 538; Code 1873, § 504; Code 1882, § 504; Civil Code 1895, § 359; Civil Code 1910, § 408; Code 1933, § 91-708; Ga. L. 1985, p. 1053, § 2.

36-9-11. Destruction or damaging of any county building or its appurtenances or furniture.

Any person who designedly destroys, injures, or defaces any public building or its appurtenances or furniture or uses the same for an indecent purpose shall be liable for the damages and shall be guilty of a misdemeanor. (Orig. Code 1863, § 472; Code 1868, § 534; Code 1873, § 500; Code 1882, § 500; Civil Code 1895, § 358; Penal Code 1895, § 725; Civil Code 1910, § 407; Penal Code 1910, § 777; Code 1933, §§ 91-707, 91-9903.)

Cross references. — Criminal penalty for destroying, damaging, or otherwise affecting government property, § 16-7-24.

JUDICIAL DECISIONS

Applicability to town jail. — This section applies to all holdings owned by a state or the state's subdivisions, including a town jail. Shepherd v. State, 16 Ga. App. 248, 85 S.E. 83 (1915) (see O.C.G.A. § 36-9-11).

Urinating on courthouse door-facing a misdemeanor. — Entering a courthouse and urinating against the door-facing therein is a misdemeanor, whether as a result thereof the building is injured or defaced or not. Smith v. State, 110 Ga. 292, 35 S.E. 166 (1900).

RESEARCH REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d, Malicious Mischief and Related Offenses, § 1, 3, 5, 7, 8, 22.

C.J.S. — 54 C.J.S., Malicious or Criminal Mischief, §§ 1, 2.

CHAPTER 10

PUBLIC WORKS CONTRACTS

Sec.
36-10-1. Contracts to be in writing and entered on minutes.
36-10-2. Letting of contracts for public works [Repealed].
36-10-2.1. Letting by counties with population of 800,000 or more.
36-10-2.2. Letting by certain counties with population of more than 150,000.
36-10-3 through 36-10-5 [Repealed].

Cross references. — Power of counties to contract for public road purposes, § 32-4-60 et seq.

Law reviews. — For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

For note, "The Legal Nature of Public Purpose Authorities: Governmental, Private, or Neither," see 8 Ga. L. Rev. 680 (1974).

JUDICIAL DECISIONS

Cited in Home Indem. Co. v. Battey Mach. Co., 109 Ga. App. 322, 136 S.E.2d 193 (1964).

RESEARCH REFERENCES

ALR. — Applicability of state statutes or municipal regulations to contracts for performance of work on land owned or leased by the federal government, 91 ALR 779; 115 ALR 371; 127 ALR 827.

Construction and effect of "changed conditions" clause in public works or construction contract with state or its subdivision, 56 ALR4th 1042.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 ALR4th 93.

What are "prevailing wages," or the like, for purposes of state statute requiring payment of prevailing wages on public works projects, 7 ALR5th 400.

Employers subject to state statutes requiring payment of prevailing wages on public works projects, 7 ALR5th 444.

What projects involve work subject to state statutes requiring payment of prevailing wages on public works projects, 10 ALR5th 337.

Employees' private right of action to enforce state statute requiring payment of prevailing wages on public works projects, 10 ALR5th 360.

36-10-1. Contracts to be in writing and entered on minutes.

All contracts entered into by the county governing authority with other persons in behalf of the county shall be in writing and entered on its minutes. (Orig. Code 1863, § 465; Code 1868, § 527; Code 1873, § 493; Code 1882, § 493; Civil Code 1895, § 343; Civil Code 1910, § 386; Code 1933, § 23-1701.)

Law reviews. — For article surveying important general legal principles of municipal and county government purchasing and contracting in Georgia, see 16 Mercer L. Rev. 371 (1965). For article surveying 1979 developments in Georgia contract law, see 31 Mercer L. Rev. 27 (1979). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For article surveying Georgia cases in the area of county contracts from June 1979 through May 1980, see 32 Mercer L. Rev. 283 (1980). For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001). For survey article on construction law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 85 (2003). For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Analysis

General Consideration
Enforceability of Contracts
Entry upon Minutes
Types of Contracts
Procedure

General Consideration

Policy. — This section is designed to keep the public's business open to inspection. Thus, no one can seriously contend that a party has entered into a legal contract with county officers and is entitled to the benefits of a contract, unless there has been a full compliance with the requirements of this section. Graham v. Beacham, 189 Ga. 304, 5 S.E.2d 775 (1939) (see O.C.G.A. § 36-10-1).

Purpose. — Purpose and effect of this section was to furnish a defense for the county against the claim of any contractor with the county who might enter into a contract with the county without compliance with the condition imposed by this section. Ward v. State Hwy. Bd., 172 Ga. 414, 157 S.E. 328 (1931) (see O.C.G.A. § 36-10-1).

Not applicable to municipality. — Requirement of O.C.G.A. § 36-10-1 is not applicable to a municipality. City of Powder Springs v. WMM Properties, Inc., 253 Ga. 753, 325 S.E.2d 155 (1985).

For construction of section as against Act creating county public school system. — See County Bd. of Educ. v. Young, 187 Ga. 644, 1 S.E.2d 739 (1939).

Oral contracts on behalf of a county have repeatedly been held to be void. City of Warrenton v. Johnson, 235 Ga. 665, 221 S.E.2d 429 (1975).

An oral agreement is unenforceable, even though the agreement is embodied or recited in a resolution adopted by the county commissioners and entered on the minutes. Murray County v. Pickering, 42 Ga. App. 739, 157 S.E. 343 (1931).

Subsequent oral modification. — Subsequent modification to a contract with a county may not be oral even though the contract leaves the general purpose and effect of the subject matter of the contract intact. Lester Witte & Co. v. Rabun County, 245 Ga. 382, 265 S.E.2d 4 (1980).

Requirement of entry on minutes not satisfied. — Entry on the minutes of a county board of commissioners concerning preparation of supplemental indexes to the public records of the county does not meet the requirement of this section. Fulton County v. Holland, 71 Ga. App. 455, 31 S.E.2d 202 (1944) (see O.C.G.A. § 36-10-1).

Attempted delegation of contracting power illegal. — Authorization for a county employee to purchase a dumptruck was an attempted delegation of the authority of the commission which was illegal since only the board would have the authority to make such purchase contract.

General Consideration (Cont'd)

Floyd v. Thomas, 211 Ga. 656, 87 S.E.2d 846 (1955).

Grounds for injunction. — When the petition alleges that the board of commissioners illegally entered into a contract for the purchase of certain automotive equipment by authorizing a county employee to purchase a certain type dumptruck without stating from whom it was to be purchased and at what price, and prays that the defendants be restrained and enjoined from paying for the equipment purchased, it shows a good cause of action for the relief sought, and the court did not err in overruling the general demurrer (now motion to dismiss) thereto. Floyd v. Thomas, 211 Ga. 656, 87 S.E.2d 846 (1955).

Use of word "chairman" and signatures of board members. — When contract was signed for and on behalf of county by the board's chairman, in accordance with the board's directive, it was not necessary, as urged, for the word "chairman" to follow the signature, or for all of the members of the board to sign the contract. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173 (1952).

Presumption of warrants' validity. — Contrary not being shown, it will be presumed that county warrants when issued are based upon a valid contract duly recorded as provided in this section. Thompson v. Shurling, 184 Ga. 836, 193 S.E. 880 (1937) (see O.C.G.A. § 36-10-1).

Cited in Douglas v. Austin-Western Rd. Mach. Co., 173 Ga. 834, 161 S.E. 811 (1931); Austin-Western Rd. Mach. Co. v. Fayette County, 99 F.2d 565 (5th Cir. 1938); Rainey v. Marion County, 63 Ga. App. 35, 10 S.E.2d 258 (1940); McCloy v. Christian, 206 Ga. 590, 58 S.E.2d 171 (1950); Bulloch County v. Ritzert, 213 Ga. 818, 102 S.E.2d 40 (1958); Gwinnett County v. Archer, 102 Ga. App. 813, 118 S.E.2d 97 (1960); Polk County v. Anderson, 116 Ga. App. 546, 158 S.E.2d 315 (1967); Robinson Explosives, Inc. v. Dalon Contracting Co., 132 Ga. App. 849, 209 S.E.2d 264 (1974); DeKalb County v. Scruggs, 147 Ga. App. 711, 250 S.E.2d 159 (1978); City of Saint Marys v. Stottler Stagg & Assocs., 163 Ga. App. 45, 292 S.E.2d 868 (1982); Ogletree v. Chester, 682 F.2d 1366 (11th Cir. 1982); Ellenberg v. DeKalb County (In re Maytag Sales & Serv., Inc.), 23 Bankr. 384 (Bankr. N.D. Ga. 1982); Smith v. Gwinnett County, 182 Ga. App. 875, 357 S.E.2d 316 (1987); City of Atlanta v. North By Northwest Civic Ass'n, 262 Ga. 531, 422 S.E.2d 651 (1992); Faulk v. Twiggs County, 269 Ga. 809, 504 S.E.2d 668 (1998); Maner v. Chatham County, 246 Ga. App. 265, 540 S.E.2d 248 (2000); Montgomery County v. Sharpe, 261 Ga. App. 389, 582 S.E.2d 545 (2003).

Enforceability of Contracts

Mandate of this law is absolute and applicable to each and every contract made and executed on behalf of a county; and to be valid and enforceable every contract must conform to these essential requirements. Graham v. Beacham, 189 Ga. 304, 5 S.E.2d 775 (1939).

Nonconforming contracts unenforceable. — If a contract with a county is not in writing, the contract is not enforceable. Killian v. Cherokee County, 169 Ga. 313, 150 S.E. 158 (1929).

If contracts are not in writing and not entered on the minutes, the contracts are not enforceable. Griffin v. Maddox, 181 Ga. 492, 182 S.E. 847 (1935); Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173 (1952); Ferguson v. Randolph County, 211 Ga. 103, 84 S.E.2d 70 (1954); Lasky v. Fulton County, 145 Ga. App. 120, 243 S.E.2d 330 (1978).

Any negotiations or oral agreements, or even written agreements that have not been entered on the minutes, fall short of being valid contracts conferring any right upon a party, and will not constitute a basis for an action against a county. Graham v. Beacham, 189 Ga. 304, 5 S.E.2d 775 (1939).

While a person has a legal right to have a written contract made with the county entered on the official minutes, if the contracts are not in writing and not entered on the proper minutes, the contracts are not enforceable. Hatcher v. Hancock County Comm'rs of Rds. & Revenues, 239 Ga. 229, 236 S.E.2d 577 (1977).

Contract with a county is not enforceable unless in writing and entered on the proper minutes. Though unenforceable, the oral lease agreement was not illegal.

Overlin v. Boyd, 598 F.2d 423 (5th Cir. 1979).

Contracts entered into by a county were required to be written, and thus, quantum meruit was unavailable against a county; a trial court properly entered summary judgment for a board of education, a school system, a principal, and a superintendent in a former employee's quantum meruit claim against the employees for employment compensation. Harden v. Clarke County Bd. of Educ., 279 Ga. App. 513, 631 S.E.2d 741 (2006).

Negotiations are not contract. — Mere negotiations which contemplate a written contract, followed by a vote of the governing body to accept a bid, will not constitute a contract and may later be reconsidered. Malcom v. Webb, 211 Ga. 449, 86 S.E.2d 489 (1955).

Any negotiations or oral agreements, or even written agreements that have not been entered on the minutes, fall short of being valid contracts and will not constitute a basis for an action against the county. Commercial Credit Corp. v. Mason, 151 Ga. App. 443, 260 S.E.2d 352 (1979).

Duty to pay inapplicable. — When one party furnishes and another accepts valuable services, the law generally imposes a duty to pay, regardless of the intention of the parties, but this theory of recovery is not available when a county is the defendant. PMS Constr. Co. v. DeKalb County, 243 Ga. 870, 257 S.E.2d 285 (1979).

Effect of valid contract not entered upon minutes. — County contract, otherwise valid, is not rendered void by not being entered of record by those whose duty it is to record the contract upon their minutes; but it is, through such failure, rendered unenforceable until the contract is recorded, and mandamus will lie to require its record. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173 (1952).

Warrant to pay contract not entered on minutes' record illegal. — When under the facts alleged, the purchase was such a contract as must be entered on the minutes of the commissioners under this section, and was not so entered, the issuance of the warrant to pay off the purchase price of the material was illegal, and the court was not authorized to issue a mandamus absolute, under which the commissioners are required to raise by taxation the specified amount annually as will finally pay the claim. Douglas v. Austin-Western Rd. Mach. Co., 173 Ga. 386, 160 S.E. 409 (1931) (see O.C.G.A. § 36-10-1).

County can be directed to spread a written contract it has entered into on its minutes through a writ of mandamus. Lester Witte & Co. v. Rabun County, 245 Ga. 382, 265 S.E.2d 4 (1980).

No rescission after failure of duty to record. — County commissioners cannot make a contract in behalf of the county, fail to record the contract in discharge of their official duty, and then rescind the contract because the contract is not recorded. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173 (1952).

Sovereign immunity barred contract claim. — Claim for breach of contract brought by a homeowner against a county after a sewer line flooded part of the owner's home was barred by sovereign immunity since there was no written contract. Merk v. DeKalb County, 226 Ga. App. 191, 486 S.E.2d 66 (1997).

Contract of sale of timber was not void merely because the contract was not read in full by the county attorney when the attorney presented the contract to the county commissioners for consideration and action, and because the contract was not read by the county commissioners themselves before being acted upon. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173 (1952).

Entry upon Minutes

Duty to enter contracts upon minutes. — Law imposes a duty upon those officers who govern the county's affairs to enter the contracts the officers make in behalf of the county upon the officers' minutes, and the continued neglect on the officer's part to discharge an official duty does not cause the duty to terminate. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173 (1952).

Mandamus as remedy. — If the proper county authorities refuse to make the entry, mandamus will lie to compel the authorities to do so, upon the application

Entry upon Minutes (Cont'd)

of a person authorized to institute the proceeding. Jones v. Bank of Cumming, 131 Ga. 614, 63 S.E. 36 (1908); Wagener v. Forsyth County, 135 Ga. 162, 68 S.E. 1115 (1910); King v. Casey, 164 Ga. 117, 137 S.E. 776 (1927).

Mandamus will lie to compel a commissioner or the commissioner's successor in office to record a contract, unless the applicant for such relief has with respect thereto been guilty of gross laches, or has permitted an unreasonable period of time to lapse before applying to the proper court therefor. Southern Airways Co. v. Williams, 213 Ga. 38, 96 S.E.2d 889 (1957).

When a person has a written contract with a county, the person has the legal right to have the contract entered on the minutes of proper authorities and if the proper county authorities fail or refuse to enter such contract, the judge of the superior court should by mandamus compel the authorities to so enter the contract. In a proceeding for mandamus to compel the performance of such duty, the court will not inquire into the validity of the contract further than to see that on the contract's face the contract is prima facie valid. Douglas v. Austin-Western Rd. Mach. Co., 173 Ga. 834, 161 S.E. 811 (1931).

Mandamus available only if contract valid. — The contract must be prima-facie legal to obtain mandamus. Weathers v. Easterling, 153 Ga. 601, 113 S.E. 152 (1922); Board of Comm'rs v. MacDougald Constr. Co., 157 Ga. 595, 122 S.E. 317 (1924).

Mandamus against successors in office. — When the successors in office of the commissioners fail and refuse to enter the contract upon the commissioners' minutes, the commissioners may be compelled by mandamus to do so. Weathers v. Easterling, 153 Ga. 601, 113 S.E. 152 (1922).

Who may apply for mandamus. — When a contractor in the progress of work procured loans from a bank for the purpose of completing the loan, and gave written orders to the bank authorizing the bank to receive the remaining warrants issued under the contract, the bank had such a special interest as authorized the bank to proceed by mandamus to compel the ordinary (now judge of the probate court) to enter the building contract on the minutes. Jones v. Bank of Cumming, 131 Ga. 614, 63 S.E. 36 (1908).

Person who has made a valid written contract with the county authorities has a legal right, though a nonresident of the state, to have the contract entered on such minutes. If the county authorities refuse to make the entry, the judge of the superior court should by mandamus compel the county authorities to do so. Milburn v. Commissioners of Glynn County, 112 Ga. 160, 37 S.E. 178 (1900).

Curative effect of mandamus. — Entry after the completion of the work, in compliance with a judgment in mandamus proceedings instituted to compel the entry of the contract on the minutes, cures the defect resulting from a failure to enter the contract on the minutes before the work was begun or completed. Wagener v. Forsyth County, 135 Ga. 162, 68 S.E. 1115 (1910).

No time limit for entering on minutes. — This section does not state when the contract must be entered on the minutes of the ordinary (now judge of the probate court) or county commission, nor does the statute say that the contract cannot be reduced to writing or signed by the parties at a date after the contract is made. Burke v. Wheeler County, 54 Ga. App. 81, 187 S.E. 246 (1936) (see O.C.G.A. § 36-10-1).

Statute fixes no limit of time during which a county contract may be entered of record. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173 (1952).

Sufficiency of entry. — All the material terms of a contract entered into in behalf of a county by the county authorities having jurisdiction over county matters must be in writing and entered on their minutes. Spalding County v. Chamberlin & Co., 130 Ga. 649, 61 S.E. 533 (1908).

When the record shows that the contract was entered upon the minutes of the board of commissioners, but that certain specifications were omitted, it was legal for the judge to order the entry of the

contract on the minutes. King v. Casey, 164 Ga. 117, 137 S.E. 776 (1927).

Specific contract must be entered. — Although the superintendent of public works had general written authority, duly entered upon the minutes, of the board of commissioners of roads and revenues to employ men, if the specific contract with the plaintiff was not in writing and had never been entered upon the minutes of the board, the plaintiff cannot recover. Garner v. Floyd County, 24 Ga. App. 693, 101 S.E. 918 (1920).

Simple memorandum on minutes of county commissioners that designated person was elected county physician will not authorize suit against county. Laurens County v. Thomas, 6 Ga. App. 568, 65 S.E. 302 (1909).

Signature of the chair of the board of commissioners is sufficient if authorized. Pilcher v. English, 133 Ga. 496, 66 S.E. 163 (1909).

Types of Contracts

When fiscal affairs governed by commissioners. — When a board of commissioners, or a board consisting of a single commissioner, has been created to take the place of the ordinary (now judge of the probate court) in the management of certain county affairs, this section applies. Wood v. Puritan Chem. Co., 178 Ga. 229, 172 S.E. 557 (1934) (see O.C.G.A. § 36-10-1).

When the fiscal affairs of a county have been placed in the hands of commissioners, this section is applicable to contracts made in behalf of the county by the commissioners. Graham v. Beacham, 189 Ga. 304, 5 S.E.2d 775 (1939) (see O.C.G.A. § 36-10-1).

Statute is applicable to contracts made in behalf of the county by commissioners. Malcom v. Webb, 211 Ga. 449, 86 S.E.2d 489 (1955).

When the fiscal affairs of a county have been placed in the hands of commissioners, this law is applicable to contracts made in behalf of the county by the commissioners. Commercial Credit Corp. v. Mason, 151 Ga. App. 443, 260 S.E.2d 352 (1979).

Assignment not within section. — Assignment by a county of claims to a certain bonus was held not to be such a contract as is contemplated by this section. Brown v. Rutledge & Summerour, 20 Ga. App. 118, 92 S.E. 774 (1917) (see O.C.G.A. § 36-10-1).

Creation of relation of principal and agent between a city and a county by which the former authorizes the latter to contract in behalf of the city for the paving of the city's streets, which are to constitute links in an interconnecting county seat highway which the State Highway Department (now Department of Transportation) and the county propose to construct, is not such a contract as is required to be in writing and spread upon the minutes of the board of county commissioners of such county. Faver v. Mayor of Washington, 159 Ga. 568, 126 S.E. 464 (1925).

Effect on tax levy. — It is not essential to the validity of a tax levy for specified purposes that contracts for effectuating such purposes should have been previously made and entered on the minutes. Blalock v. Adams, 154 Ga. 326, 114 S.E. 345 (1922).

Applicability to board of education. — This section does not apply to a county board of education. Wilson v. Strange, 235 Ga. 156, 219 S.E.2d 88 (1975) (see O.C.G.A. § 36-10-1).

Contract by county board of education with a person for the transportation of pupils to and from a public school is not one which is required by this section to be in writing and spread upon its minutes. Board of Educ. v. Hunt, 159 Ga. 749, 126 S.E. 789 (1925) (see O.C.G.A. § 36-10-1).

Applicability to salaries of county officials. — This section refers only to contracts, and the payment of salaries of county officials and employees is not contractual within the statute's provisions. First Nat'l Bank v. Mann, 211 Ga. 706, 88 S.E.2d 361 (1955) (see O.C.G.A. § 36-10-1).

While this section provides that all contracts entered into by the governing authority with other persons in behalf of the county shall be in writing and entered on the minutes, the payment of salaries of county officials and employees is not contractual within the statute's provisions. Deason v. DeKalb County, 222 Ga. 63, 148

Types of Contracts (Cont'd)

S.E.2d 414 (1966) (see O.C.G.A. § 36-10-1).

County attorney. — The exercise of the implied power conferred upon the county commissioners to designate a county attorney and to fix the attorney's term and salary may be effectually executed by a resolution of the county commissioners, duly passed and spread upon their minutes. Such transaction does not fall within the purview of this section, which requires all contracts entered into with other persons on behalf of the county to be in writing and entered on their minutes. The relation between the county and the county attorney does not rest upon contract, but arises from appointment impliedly authorized by legislative enactment. Templeman v. Jeffries, 172 Ga. 895, 159 S.E. 248 (1931) (see O.C.G.A. § 36-10-1).

When the relation between a county and an attorney does not rest upon contract, but arises from the appointment of the attorney as a public officer, the transaction does not fall under this section. Walker v. Stephens, 175 Ga. 405, 165 S.E. 99 (1932) (see O.C.G.A. § 36-10-1).

Procedure

Compliance must be alleged in plaintiff's petition. Milburn v. Glynn County, 109 Ga. 473, 34 S.E. 848 (1899); Carolina Metal Prods. Co. v. Taliaferro County, 28 Ga. App. 57, 110 S.E. 331 (1922).

In an action against a county for the breach of an alleged contract with the county authorities in charge of the county's fiscal affairs, it is necessary to allege that the contract was in writing and was entered upon the minutes of such authorities in order to make the contract a valid and enforceable contract against the county. A failure to so allege makes the petition subject to general demurrer (now motion to dismiss). Sosebee v. Hall County, 50 Ga. App. 21, 177 S.E. 71 (1934).

Suit against a county, based upon an alleged contract with the county, is defective unless it is alleged that such contract is in writing and has been entered on the minutes as required by the statute. When the petition fails to make such essential allegations, it is subject to demurrer (now motion to dismiss). Graham v. Beacham, 189 Ga. 304, 5 S.E.2d 775 (1939).

Petition is subject to general demurrer (now motion to dismiss) which alleges that contracts have been entered into with a county but which fails to allege that the contracts were in writing and entered on the minutes of the proper county authority. Hobbs v. Howell, 204 Ga. 370, 49 S.E.2d 827 (1948).

All contracts entered into with other persons on behalf of the county shall be in writing and entered upon its minutes. If the fiscal affairs of the county are in charge of a board of commissioners, the law applicable to judges of the probate court with respect to the management of county affairs governs. Unless there has been a full compliance with the statutory provisions relative to contracts with a county, which fact must appear from the plaintiffs' petition, the petition is subject to demurrer (now motion to dismiss). Moore v. Baker, 85 Ga. App. 234, 68 S.E.2d 911 (1952).

Petition sufficient. — Petition alleging that county commissioners had entered into contracts with one of the commissioner's members for the construction of roads in the county without the contracts being in writing and being entered on the minutes of the board, and in violation of the contracts between the State Highway Department (now Department of Transportation) and the county was sufficient as against a general demurrer (now motion to dismiss) to show that the plaintiffs were entitled to some of the substantial relief prayed for. Ferguson v. Randolph County, 211 Ga. 103, 84 S.E.2d 70 (1954).

Failure to record is a matter of defense against payment, when suit is brought on county warrants, and not upon the contract itself. Americus Grocery Co. v. Pitts Banking Co., 169 Ga. 70, 149 S.E. 776 (1929).

Waiver of noncompliance. — Failure to comply with this section is waived when no objection is made until after the verdict. Early County v. Fielder & Allen Co., 4 Ga. App. 268, 63 S.E. 353 (1908) (see O.C.G.A. § 36-10-1).

Objection under section must be timely. — Whether or not the provisions of former Code 1933, § 23-1701 (see O.C.G.A. § 36-10-1), would in any event apply to a written agreement to submit a matter in suit to arbitration under former Code 1933, § 7-411 (see O.C.G.A. § 9-9-70), the fact that the agreement was never so entered was not available as a defense in the instant suit for mandamus, since an objection based upon this ground, if valid, should have been made before the entry of the judgment on the award. Hall County v. Smith, 178 Ga. 212, 172 S.E. 645 (1934).

Conformity a matter of proof at trial. — Under this section, and in view of the construction placed upon the statute by the Supreme Court, a suit based upon an alleged contract with the county cannot prevail when it is not shown that there has been compliance with this section. Spears v. Robertson, 170 Ga. 368, 152 S.E. 903 (1930) (see O.C.G.A. § 36-10-1).

Plaintiff may not recover from a county on a contract unless the contract is on the minutes; this is a matter of proof at trial and not a matter of pleading. PMS Constr. Co. v. DeKalb County, 243 Ga. 870, 257 S.E.2d 285 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Statute applies to implied and written county contracts without distinction. 1980 Op. Att'y Gen. No. 80-128 (see O.C.G.A. § 36-10-1).

County may enforce implied contract but implied contract cannot be enforced against a county. 1980 Op. Att'y Gen. No. 80-128.

Not entered upon minutes. — Although county contracts which are written but not entered in the minutes are unenforceable, such failure is a curable defect. 1980 Op. Att'y Gen. No. 80-128.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 231.

ALR. — Elements bearing directly upon the quality of a contract as affecting the character of one as independent contractor, 20 ALR 684.

Construction of paving contract or contractor's bond in respect of the contractor's obligation as to repairs, 72 ALR 644.

Power of municipality to fix specific scale of wages or hours for employees of contractors or subcontractors for municipal contracts, 81 ALR 349; 129 ALR 763.

Inclusion in contract for public work of provision regarding extension of time for performance not specifically set out in the call for bids, 114 ALR 1437.

36-10-2. Letting of contracts for public works.

Reserved. Repealed by Ga. L. 2000, p. 498, § 2, effective April 20, 2000.

Editor's notes. — This Code section was based on Ga. L. 1878-79, p. 159, § 1; Ga. L. 1880-81, p. 183, § 1; Code 1882, § 493a; Civil Code 1895, § 344; Civil Code 1910, § 387; Code 1933, § 23-1702; Ga. L. 1982, p. 3, § 36; Ga. L. 1989, p. 356, § 4.

36-10-2.1. Letting by counties with population of 800,000 or more.

In any county of this state having a population of 800,000 or more according to the United States decennial census of 2000 or any future

such census, contracts for building or repairing any courthouse or other public building, jail, bridge, causeway, or other public works or public property shall be let to the lowest responsible bidder, but the governing authority of any such county shall have the right to reject any or all bids for any such contract. The governing authority of any such county, in considering whether a bidder is responsible, may consider the bidder's quality of work, general reputation in the community, financial responsibility, previous employment on public works, and compliance with a minority business enterprise participation plan or making a good faith effort to comply with the goals of such a plan. (Code 1981, § 36-10-2.1, enacted by Ga. L. 1986, p. 309, § 1; Ga. L. 1987, p. 166, § 1; Ga. L. 2002, p. 1473, § 1.)

JUDICIAL DECISIONS

Minority business enterprise. — Enactment of O.C.G.A. § 36-10-2.1 did not affirm a county's authority to take minority business enterprise compliance into account in letting contracts prior to 1986. S.J. Groves & Sons Co. v. Fulton County, 920 F.2d 752 (11th Cir.), cert. denied, 500 U.S. 959, 111 S. Ct. 2274, 114 L. Ed. 2d 725, cert. denied, 501 U.S. 1252, 111 S. Ct. 2893, 115 L. Ed. 2d 1057 (1991).

36-10-2.2. Letting by certain counties with population of more than 150,000.

In any county having a population of more than 150,000 in any metropolitan statistical area having a population of not less than 260,000 nor more than 360,000 according to the United States decennial census of 1980 or any future such census, contracts for building or repairing any courthouse or other public building, jail, bridge, causeway, or other public works or public property shall be let to the lowest responsible bidder, but the governing authority of any such county shall have the right to reject any or all bids for any such contract. The governing authority of any such county, in considering whether a bidder is responsible, may consider the bidder's quality of work, general reputation in the community, financial responsibility, previous employment on public works, and compliance with a minority business enterprise participation plan or making a good faith effort to comply with the goals of such a plan. (Code 1981, § 36-10-2.2, enacted by Ga. L. 1988, p. 989, § 1.)

36-10-3 through 36-10-5.

Reserved. Repealed by Ga. L. 2000, p. 498, § 2, effective April 20, 2000.

Editor's notes. — Former Code Sections 36-10-3 through 36-10-5, relating to contracts for public works, were based on Ga. L. 1878-79, p. 159, § 3, p. 160, §§ 2, 4; Code 1882, §§ 493b-493d; Ga. L. 1889, p. 49, § 1; Civil Code 1895, §§ 345, 346;

Penal Code 1895, § 279; Civil Code 1910, §§ 388, 389; Penal Code 1910, § 283; Ga. L. 1920, p. 58, § 1; Code 1933, §§ 23-1703, 23-1704, 23-9904; Ga. L. 1939, p. 193, § 1; Ga. L. 1967, p. 547, § 1; Ga. L. 1969, p. 954, § 1; Ga. L. 1978, p. 2029, § 1; Ga. L. 1980, p. 534, § 1; Ga. L. 1987, p. 641, § 1; Ga. L. 1989, p. 278, § 2; Ga. L. 1989, p. 356, § 5.

CHAPTER 11

CLAIMS AGAINST COUNTIES

Sec.
36-11-1. Time for presentation of claims.
36-11-2. Audit and registration of claims against county; issuance of order on treasurer for claim; specification of fund on which order drawn.
36-11-3. When orders to be paid; registration of orders issued.
36-11-4. Order in which county debts paid.
36-11-5. Interest on orders presented and not paid.
36-11-6. Negotiability of county orders.
36-11-7. Satisfaction of judgment against county.

Cross references. — Liability of Department of Transportation for actions against counties relating to public roads forming part of state highway system, § 32-2-6.

36-11-1. Time for presentation of claims.

All claims against counties must be presented within 12 months after they accrue or become payable or the same are barred, provided that minors or other persons laboring under disabilities shall be allowed 12 months after the removal of the disability to present their claims. (Orig. Code 1863, § 479; Code 1868, § 541; Code 1873, § 507; Code 1882, § 507; Civil Code 1895, § 362; Civil Code 1910, § 411; Code 1933, § 23-1602.)

Law reviews. — For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981). For article surveying developments in Georgia torts law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 247 (1981). For survey article on local government law, see 34 Mercer L. Rev. 225 (1982). For article, "Claims Against Counties: The Difference a Year Makes," see 36 Mercer L. Rev. 1 (1984). For article, "Defending the Lawsuit: A First-Round Checklist," see 22 Ga. St. B.J. 24 (1985). For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990). For annual survey on law of torts, see 42 Mercer L. Rev. 431 (1990).

JUDICIAL DECISIONS

Analysis

General Consideration
Specific Claims
Presentation of Claims
Procedure

General Consideration

Constitutionality. — This section, providing that "all claims against counties must be presented within 12 months after they accrue or become payable, or the same are barred," is not inconsistent with Ga. Const. 1976, Art. IX, Sec. VI, Para. II (see, now, Ga. Const. 1983, Art. IX, Sec. II, Para. IX). Cobb v. Board of Comm'rs of Rds. & Revenue, 151 Ga. App. 472, 260 S.E.2d 496 (1979) (see O.C.G.A. § 36-11-1).

Purpose of this section is to afford the county an opportunity to investigate the claim and ascertain the evidence, and to avoid the incurrence of unnecessary litigation. Stelling v. Richmond County, 81 Ga. App. 571, 59 S.E.2d 414 (1950) (see O.C.G.A. § 36-11-1).

Rationale behind presentment of claim. — Object of presenting a claim to a county before the institution of suit is to afford the county an opportunity to investigate the claim and ascertain the evidence, and to avoid the incurrence of unnecessary litigation. Davis v. Cobb County, 65 Ga. App. 533, 15 S.E.2d 814 (1941); Sikes v. Candler County, 247 Ga. 115, 274 S.E.2d 464 (1981).

Comparison with § 36-33-5. — While former Code 1933, § 69-308 (see O.C.G.A. § 36-33-5), providing for the filing of a claim against a municipality before suit against such municipality, is unlike the provisions of former Code 1933, § 23-1602 (see O.C.G.A. § 36-11-1) relative to the presentment of claims against a county, the objects and purposes of these two statutes are similar. Davis v. Cobb County, 65 Ga. App. 533, 15 S.E.2d 814 (1941).

Substantial compliance with statutory requirements of ante litem notice is sufficient to give notice of a claim to a county. Burton v. DeKalb County, 202 Ga. App. 676, 415 S.E.2d 647, cert. denied, 202 Ga. App. 905, 415 S.E.2d 647 (1992).

Existence of cause of action. — Under this section, a cause of action against a county such as can be recovered upon does not exist unless the claim has been presented within 12 months after the claim's accrual. Atlantic Coast Line R.R. v. Mitchell County, 36 Ga. App. 47, 135 S.E. 223 (1926) (see O.C.G.A. § 36-11-1).

Principle of common honesty is beside the mark in determining whether the action, whatever be its nature, is subject to the bar of the statute of limitations. Mobley v. Murray County, 178 Ga. 388, 173 S.E. 680 (1934).

Availability of injunction. — When a nuisance is continuing, the property owner is entitled to seek an injunction, as well as damages for the 12 months preceding, upon giving notice to the county. Duffield v. DeKalb County, 242 Ga. 432, 249 S.E.2d 235 (1978).

Cited in Baggett v. Barrow, 166 Ga. 700, 144 S.E. 251 (1928); Habersham County v. Cornwall, 38 Ga. App. 419, 144 S.E. 55 (1928); Newsome v. Treutlen County, 168 Ga. 764, 149 S.E. 44 (1929); Effingham County v. Zittrouer, 39 Ga. App. 115, 146 S.E. 351 (1929); Felton v. Macon County, 43 Ga. App. 651, 159 S.E. 730 (1931); Morris v. Floyd County, 46 Ga. App. 150, 167 S.E. 127 (1932); MacNeill v. Steele, 186 Ga. 792, 199 S.E. 99 (1938); Habersham County v. Knight, 63 Ga. App. 720, 12 S.E.2d 129 (1940); State Hwy. Dep't v. McClain, 216 Ga. 1, 114 S.E.2d 125 (1960); Lorenz v. DeKalb County, 102 Ga. App. 9, 115 S.E.2d 487 (1960); Richmond County v. Sibert, 218 Ga. 209, 126 S.E.2d 761 (1962); Clayton County v. Sarno, 112 Ga. App. 379, 145 S.E.2d 283 (1965); DeKalb County v. McFarland, 223 Ga. 196, 154 S.E.2d 203 (1967); Fulton County v. Woodside, 223 Ga. 316, 155 S.E.2d 404 (1967); Polk County v. Anderson, 116 Ga. App. 546, 158 S.E.2d 315 (1967); Evans County v. McDonald, 133 Ga. App. 955, 213 S.E.2d 82 (1975); Christensen v. Floyd County, 158 Ga. App. 274, 279 S.E.2d 723 (1981); Neely v. Richmond County, 161 Ga. App. 71, 289 S.E.2d 258 (1982); Mullins v. Columbia County, 202 Ga. App. 148, 413 S.E.2d 489 (1991).

Specific Claims

When the right to and amount of a claim is fixed by law, such claim does not come within the purview of those claims barred by this section. The claims intended to be barred by this section have reference to claims growing out of contract or breach of duty. Norris v. Nixon, 78 Ga. App. 769, 52 S.E.2d 529 (1949); Owens v. Floyd County, 94 Ga. App. 532, 95 S.E.2d

Specific Claims (Cont'd)

389 (1956) (see O.C.G.A. § 36-11-1).

Applicable only to claims arising from contract. — Requirements of O.C.G.A. § 36-11-1 on presenting claims apply to claims arising from contract and do not apply to a claim when the right to and amount of the claim is fixed by law as when a hospital furnishes emergency services to pregnant indigent residents of the county under O.C.G.A. § 31-8-40 et seq. Terrell County v. Albany/Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378 (1987).

Mandamus claim. — After federal claims were dismissed in a former employee's action against a county employer, the employee's mandamus claims against a county official for reinstatement were not straightforward so as to allow the court to accept jurisdiction of state claims under 28 U.S.C. § 1367 because it was unclear whether ante litem notice was required under O.C.G.A. § 36-11-1 and whether a one-year limitation of O.C.G.A. § 9-3-33 applied to the mandamus claim. Toma v. Columbia County, No. CV 106-145, 2007 U.S. Dist. LEXIS 30096 (S.D. Ga. Apr. 20, 2007).

Affirmative action programs. — O.C.G.A. § 36-11-1 did not apply to bar plaintiffs' federal and state constitutional claims arising from defendants' operation of a county's minority and female business enterprise program. Webster v. Fulton County, 44 F. Supp. 2d 1359 (N.D. Ga. 1999).

Landowners' claims for nuisance, trespass, negligence, and violation of riparian rights. — County was entitled to summary judgment on a landowner's claims for nuisance, trespass, negligence, and violation of riparian rights because the county had sovereign immunity as to all claims which did not amount to an inverse condemnation of the land, and the condemnation claim was barred by the landowner's failure to provide proper ante-litem notice pursuant to O.C.G.A. § 36-11-1 within 12 months of when the landowner's claim accrued. Jones v. E.R. Snell Contr., Inc., 333 F. Supp. 2d 1344 (N.D. Ga. 2004).

Suit to hold governmental officer personally liable. — Plaintiffs were not compelled to notify sheriff of the suit in advance of filing suit against the sheriff because a party seeking a money judgment holding a governmental officer or agent personally liable, albeit for actions in the officer's or agent's official capacity, is a suit against the individual and not the government. Strickland v. Wilson, 205 Ga. App. 91, 421 S.E.2d 94 (1992), cert. denied, 205 Ga. App. 901, 421 S.E.2d 94 (1992).

Actions against school districts. — In the absence of an expression of legislative intent to apply the statute of limitations to actions against school districts, and in the absence of any specific bar to limit actions against school districts, O.C.G.A. § 36-11-1 does not apply to school districts. Payne v. Blackwell, 259 Ga. 483, 384 S.E.2d 393 (1989).

Salaries of public officers which have been fixed by law do not come within the bar of this statute. Stelling v. Richmond County, 81 Ga. App. 571, 59 S.E.2d 414 (1950).

Salary of commissioner. — This section is not applicable to allowances for salary of the road commissioner under a local law as the commissioner's salary is an allowance provided by law for the benefit of the commissioner as a public officer, and has no reference to contract or breach of duty. Sammons v. Glascock County, 161 Ga. 893, 131 S.E. 881 (1926) (see O.C.G.A. § 36-11-1).

Tax collector commissions. — Since the duty of the county authorities to pay the tax collector commissions and the amount of commissions thus payable to the tax collector, as compensation to a public officer, are both fixed and determined by law, it is not incumbent upon the tax collector to present the collector's claim within 12 months in order to prevent it from becoming barred under this section. Bibb County v. Winslett, 191 Ga. 860, 14 S.E.2d 108 (1941) (see O.C.G.A. § 36-11-1).

When bond is given, any action thereon is limited to one year from the completion of the contract and acceptance of the work by proper public authorities. Standard Oil Co. v. Jasper County, 53 Ga. App. 804, 187 S.E. 307 (1936).

Claim of payee of void note. — Claim against a county by a payee of a void note

for money used by the county and paid out on outstanding valid warrants, even if enforceable against the county, was barred since it was not presented within 12 months after accrual. Farmers' Loan & Trust Co. v. Wilcox County, 2 F.2d 465 (5th Cir. 1924).

County warrants. — County warrants are not such "claims" as are required to be presented within 12 months after the claims accrue or become payable. Jackson Banking Co. v. Gaston, 149 Ga. 31, 99 S.E. 30 (1919); Commercial Trust Co. v. Laurens County, 267 F. 897 (S.D. Ga. 1920); Central of Ga. Ry. v. Wright, 35 Ga. App. 144, 132 S.E. 449 (1926).

Claim to be subrogated to rights of former holders of county warrants paid with money of claimant is one which must be presented within 12 months after accrual. Farmers' Loan & Trust Co. v. Wilcox County, 298 F. 772 (S.D. Ga.), aff'd, 2 F.2d 465 (5th Cir. 1924).

Assertion of ownership of land in possession of county is not such claim as must be presented within 12 months. Lynch v. Harris County, 188 Ga. 651, 4 S.E.2d 573 (1939).

Nuisance. — When evidence shows that the extent of a nuisance has not increased, so as to amount to the additional taking of property or additional damages to the property owner inside the 12-month period, then any action is barred. However, if the nuisance occurs within or its extent is increased during the 12-month period so as to amount to an additional taking of property belonging to a party, then that portion of the property taken during the 12-month period would be actionable. Duffield v. DeKalb County, 242 Ga. 432, 249 S.E.2d 235 (1978).

Trial court did not err by failing to allow a property owner to assert the owner's nuisance claim against a county in relation to a second notice sent to the county because at best, the owner would only be allowed to assert a claim for a second time period if the owner could show that the extent of the nuisance had increased, so as to amount to the additional taking of property or additional damages to the property owner in the second 12-month period; the owner did not show that the county's taking increased after the original 12-month period. Bailey v. Annistown Rd. Baptist Church, Inc., 301 Ga. App. 677, 689 S.E.2d 62 (2009), cert. denied, No. S10C0669, 2010 Ga. LEXIS 468 (Ga. 2010).

Trial court did not err by denying a county's motion for directed verdict on the ground that a property owner's ante-litem notice expressly limited the owner's trespass and nuisance claims to personal property damages only because a directed verdict was not demanded when the owner's notice was ambiguous at worst, and a reasonable person could construe the notice to refer to all of the owner's property, personal and real. Bailey v. Annistown Rd. Baptist Church, Inc., 301 Ga. App. 677, 689 S.E.2d 62 (2009), cert. denied, No. S10C0669, 2010 Ga. LEXIS 468 (Ga. 2010).

Continuing nuisance. — Property owner is not barred from recovering for damages for a continuing nuisance, even when notice is not given within 12 months of completion of construction of the roadway. Reid v. Gwinnett County, 242 Ga. 88, 249 S.E.2d 559 (1978).

When appellee gave sufficient notice under O.C.G.A. § 36-11-1 that county had duty to abate nuisance, and when appellee was thereafter in compliance with O.C.G.A. § 36-11-1, appellee was entitled to appellee's remedy, regardless of whether or when subsequent injuries occurred on appellee's property as a result of the continuing nuisance. DeKalb County v. Bolick, 249 Ga. 843, 295 S.E.2d 92 (1982).

Bar provided by O.C.G.A. § 36-11-1 is applicable in suits seeking to recover against a county for depreciation in market value of the property taken due to the alleged creation and maintenance of a continuing nuisance. Puckett v. Gwinnett County, 200 Ga. App. 53, 406 S.E.2d 561 (1991).

Taking private property. — All claims against a county for taking or damaging private property for public uses must be filed within 12 months, and suit thereon for the depreciation in the market value must be instituted within the period of limitations stipulated by the law. It is not the policy of the law to permit the bringing of suits against counties from

Specific Claims (Cont'd)

time to time for damages which might result by reason of negligently constructed public improvements constituting a nuisance. Bibb County v. Green, 42 Ga. App. 552, 156 S.E. 745 (1931); Jones v. Fulton County, 207 Ga. App. 397, 427 S.E.2d 802 (1993).

Ratification of acts of agent. — Limitation of a claim against a county which is predicated on the ratification of acts of an alleged agent begins to run from the date of the ratification, and the claim is barred after the lapse of 12 months from the ratification. Standard Oil Co. v. Jasper County, 53 Ga. App. 804, 187 S.E. 307 (1936).

Materialman's liens. — Materialman may bring suit against the county prior to the completion of the work, if the contractor is then insolvent; in such case, the time when the contractor becomes insolvent is the time when the loss results and the county becomes subject to suit. Standard Oil Co. v. Jasper County, 53 Ga. App. 804, 187 S.E. 307 (1936).

Claim against a county, for a loss by a person who furnished material for the building of a road to a contractor who was not required by the county to give bond is barred after the lapse of one year from the date when the contractor became insolvent, and from the date when the materialman's lien against the contractor became due. Standard Oil Co. v. Jasper County, 53 Ga. App. 804, 187 S.E. 307 (1936).

Suits by imprisoned persons. — While there is no statutorily imposed disability which would prevent an imprisoned person from suing, O.C.G.A. § 9-3-90 provides an imprisoned person the benefit of a statutory provision tolling the statutes of limitation. The result is that a person imprisoned has an option of bringing an action while incarcerated or waiting until the period of incarceration ends. If the latter option is chosen, the period of limitation begins to run from the date of release, i.e., the time the "disability" is removed. Maddox v. Hall County, 162 Ga. App. 371, 291 S.E.2d 442 (1982).

Inmate's cause of action for negligence against county jail officials for giving the inmate another inmate's medication by mistake accrued on the date the inmate became aware of the mistake. Hayes v. Medical Dep't, 197 Ga. App. 563, 398 S.E.2d 837 (1990).

Claim for hospital care for prisoner. — Board of Regents of the University System of Georgia was required to comply with the ante litem notice requirement with regard to medical bills incurred by a prisoner resulting from a fight in jail since, although O.C.G.A. § 42-5-2(a) provided that a governmental unit having custody of a prisoner must furnish the prisoner with needed hospital attention, there was no law requiring payment by the governmental unit for such services. Board of Regents v. Putnam County, 234 Ga. App. 427, 506 S.E.2d 923 (1998).

Claim following police chase. — Trial court erred in denying a county's motion for summary judgment on the ground that the time for filing the ante litem notice had been tolled by the application of O.C.G.A. §§ 9-3-96 and 9-3-99 because the county was not a criminal defendant in a prior prosecution, and the county did not prevent a surviving spouse from learning that the spouse had a cause of action based upon an alleged police pursuit that could have contributed to the decedent spouse's death; the county was not prosecuted for any crime arising out of a collision involving a shoplifter and the car in which the decedent was a passenger, and the surviving spouse was aware of the facts that the spouse contended gave rise to the spouse's claims despite the county's alleged fraud. Columbia County v. Branton, 304 Ga. App. 149, 695 S.E.2d 674 (2010).

Presentation of Claims

Sufficiency of presentation. — Writing should certainly show who makes the demand, for what reason the demand is made, and the amount thereof. Troup County v. Boddie, 14 Ga. App. 434, 81 S.E. 376 (1914).

Claim in writing. — It is essential that the claim required to be filed with a county, as provided in this section, be in writing. Griffin Realty & Constr. Co. v. Chatham County, 47 Ga. App. 545, 171 S.E. 237 (1933) (see O.C.G.A. § 36-11-1).

All claims against counties must be presented in writing. A mere oral statement is insufficient. Williams v. Lowndes County, 120 Ga. App. 429, 170 S.E.2d 750 (1969); Doyal v. DOT, 142 Ga. App. 79, 234 S.E.2d 858 (1977).

Mere conversation not sufficient. — Conversations with members of board of commissioners looking to a compromise are not sufficient presentment. Powell v. County of Muscogee, 71 Ga. 587 (1883).

Conversations with individual commissioners or verbal proposals to compromise do not circumvent the limitation provided by O.C.G.A. § 36-11-1. Puckett v. Gwinnett County, 200 Ga. App. 53, 406 S.E.2d 561 (1991).

Presentation must be made within 12 months of accrual. — Claims against a county are required to be presented to the chair of the claims of commissioners within 12 months after the claims accrue. Ellenberg v. DeKalb County (In re Maytag Sales & Serv., Inc.), 23 Bankr. 384 (Bankr. N.D. Ga. 1982).

Bringing of suit within time limit is sufficient presentation of claim. Dement v. DeKalb County, 97 Ga. 733, 25 S.E. 382 (1896); Elbert County v. Brown, 16 Ga. App. 834, 86 S.E. 651 (1915); Mitchell County v. Dixon, 20 Ga. App. 21, 92 S.E. 405 (1917); Taylor v. Richmond County, 57 Ga. App. 586, 196 S.E. 303 (1938).

Service within 12 months. — Petition must not only be filed but served within 12 months after claim accrues. Pearson v. Newton County, 119 Ga. 863, 47 S.E. 180 (1904); Godfrey v. County of Jefferson, 21 Ga. App. 384, 94 S.E. 604 (1917).

Twelve-month limit not applicable to claims against school district. — When the plaintiff failed to give the defendant school district written notice of plaintiff's claim within 12 months after the accrual of plaintiff's cause of action, the trial court properly determined that this failure did not constitute a bar to the action because the claim was against a county school district rather than a county because a claim against a county school district did not constitute a claim against the county within the contemplation of O.C.G.A. § 36-11-1. Payne v. Blackwell, 259 Ga. 483, 384 S.E.2d 393 (1989).

When claim accrues. — Trial court erred in ruling that a subcontractor's claim against a county accrued on the day the subcontractor received notification about the contractor's cash flow problems when, for three months after the letter was written, the contractor continued to work on the project. Kelly Energy Sys. v. Board of Comm'rs, 196 Ga. App. 519, 396 S.E.2d 498 (1990).

No substitute for presentation. — When the suit was not brought within 12 months after the accrual of the right of action, it cannot be urged as a substitute for or an equivalent of the presentation of a claim. Newsome v. Treutlen County, 168 Ga. 764, 149 S.E. 44 (1929).

Letter to board of commissioners sufficient. — Letter sent to the county board of commissioners by a party, a copy of which was sent to the Department of Transportation, did constitute a presentation of the claim being sued on, since the letter contained sufficient information to afford the recipients thereof an opportunity to investigate the claim and ascertain the evidence prior to suit. Sikes v. Candler County, 247 Ga. 115, 274 S.E.2d 464 (1981).

Statement of damages. — O.C.G.A. § 36-11-1 does not create an inflexible requirement that presentation to county of claim must always contain statement of amount of damages in order to be sufficient. Sikes v. Candler County, 247 Ga. 115, 274 S.E.2d 464 (1981).

Letter met ante litem requirements. — Landowners substantially complied with statutory ante litem requirements of O.C.G.A. § 36-33-5 when the letter the landowners sent to the city alleging damages from a continuing nuisance the city allegedly maintained on the landowners' property and identifying the nature and location of the damage, the cause, and the nature of the potential cause of action, sufficiently put the city on notice of the problem occurring on their property. City of Columbus v. Barngrover, 250 Ga. App. 589, 552 S.E.2d 536 (2001).

Claim need not be presented while governing authority actually in session. — This section does not require that a claim against the county be presented at

Presentation of Claims (Cont'd)

a time when the governing authority or authorities of the county are actually in session, either at a regular or called meeting, for the transaction of county affairs. Davis v. Cobb County, 65 Ga. App. 533, 15 S.E.2d 814 (1941) (see O.C.G.A. § 36-11-1).

Notice to insurer insufficient. — Formal, written notice to the county is required in presentation of an insurance claim, and notice to the county's liability insurer does not satisfy the statute. Cobb v. Board of Comm'rs of Rds. & Revenue, 151 Ga. App. 472, 260 S.E.2d 496 (1979).

Presentation for auditing. — Charge by the party presenting a claim need not use the word "audit," but it is sufficient if the party presents it for that purpose, and the ordinary (now judge of the probate court) examines it and refuses to allow it, that is, refuses to audit it and approve it but rejects and disallows it, is not erroneous. County of Cobb v. Adams, 68 Ga. 51 (1881).

Procedure

Defense must be set forth affirmatively. — It is incumbent on a party pleading to a preceding pleading to set forth affirmatively any statute of limitation as a defense to an action. Failure to do so results in the court's determination that this issue is not raised, even though it may be present and could operate as a bar to recovery. Nipper v. Crisp County, 120 Ga. App. 583, 171 S.E.2d 652 (1969).

Defense under Ga. L. 1971, p. 180, §§ 6, 9 (see O.C.G.A. § 36-11-1) must be specially pleaded under Ga. L. 1967, p. 226, § 8 (see O.C.G.A. § 9-11-8(c)). Gordy Constr. Co. v. KHM Dev. Co., 128 Ga. App. 648, 197 S.E.2d 426 (1973).

In the absence of distinct averments of the presentation of valid claims against the county within the time prescribed by the statute, the petition was subject to demurrer (now motion to dismiss). Commissioners of Rds. & Revenue v. Howard, 59 Ga. App. 541, 1 S.E.2d 222 (1939).

Writing must be alleged. — An allegation that the claim was presented "as provided by law" will not supply the place of a distinct allegation that it was presented in writing. Sparks v. Floyd County, 15 Ga. App. 80, 82 S.E. 583 (1914).

Plaintiff was not dilatory in filing plaintiff's motion to amend to add the county as a new party when the plaintiff filed a negligence suit against a motor company approximately four months after a fatal incident occurred, and moved to add the county for faulty sign-posting approximately two months after filing the original suit. Although O.C.G.A. § 36-11-1 did not require plaintiff to wait for a response from the county after plaintiff notified them of plaintiff's claim, plaintiff's two-month delay in adding the county was not dilatory. Jarriel v. GMC, 835 F. Supp. 639 (N.D. Ga. 1993).

Petition subject to dismissal when petition does not show presentation of claim. — When it did not appear in the petition in a suit against a county that the claim sued on was presented to the county within 12 months after the claim accrued or became payable, and when it did not appear that the petition was filed and service thereon perfected upon the county within this period, the petition failed to set out a cause of action, and was subject to dismissal. Griffin Realty & Constr. Co. v. Chatham County, 47 Ga. App. 545, 171 S.E. 237 (1933); Commissioners of Rds. & Revenue v. Howard, 59 Ga. App. 541, 1 S.E.2d 222 (1939).

Sufficiency of averment of presentation. — Statement by plaintiff that plaintiff had in writing demanded compensation from those commissioners, who had refused payment thereof, is sufficient averment of presentation. Adkins v. Crawford County, 135 Ga. 679, 70 S.E. 335 (1911).

Allegation of time. — Allegations that the claim arose "some time during the year 1910," and that the plaintiff's claim for damages was filed on October 14, 1911, are not sufficient to show presentation within 12 months. Elbert County v. Chapman, 15 Ga. App. 197, 82 S.E. 808 (1914).

An action against a county, brought in 1923, to recover taxes alleged to have been illegally levied and collected in 1919, and alleging that a month before the filing of the suit a demand that the taxes so collected be refunded was made upon the

county authorities and refused, was barred. Atlantic Coast Line R.R. v. Mitchell County, 36 Ga. App. 47, 135 S.E. 223 (1926).

Time to submit claim. — Claim by a hospital for services rendered to a prisoner injured in a fight in jail was untimely when the prisoner was discharged on December 5, 1996, and a claim was not submitted to the defendant county until December 6, 1997; notwithstanding a hospital policy that bills are not due and payable until 30 days after discharge, the 12 month period began to run at the date of discharge. Board of Regents v. Putnam County, 234 Ga. App. 427, 506 S.E.2d 923 (1998).

In a suit against a county after county workers performed work on private property, it was undisputed that no written ante litem notice was provided to the county of any claim in connection with work performed by the county's workers until August 2003, and by this time, any action either contesting or contrary to the terms of a settlement agreement was barred by the statute of limitations. Meadows v. Houston County, 295 Ga. App. 183, 671 S.E.2d 225 (2008).

Averment of presentation of note evidencing loan insufficient. — When a plaintiff seeks to recover money loaned to a county and used by the county, an allegation that plaintiff presented the notes evidencing the loan is not a sufficient averment of presentation. The notes were illegal. This section contemplates present legal action. Butts County v. Wright, 143 Ga. 253, 84 S.E. 443 (1915) (see O.C.G.A. § 36-11-1).

Garnishment not allowed. — System provided by law for the payment of claims against counties is to be adopted in all cases. This system cannot be preserved by allowing counties to be garnished. Dotterer v. Bowe, 84 Ga. 769, 11 S.E. 896 (1890).

OPINIONS OF THE ATTORNEY GENERAL

Governing authority subject to general law when remitting or crediting county taxes. — Governing authority of the county in exercising the county's authority under former Code 1933, §§ 92-3812 and 92-6502 (see O.C.G.A. § 48-5-241) was subject to the general law set forth in former Code 1933, § 20-1007 (see O.C.G.A. § 13-1-13), and was also subject to the limitation prescribed in former Code 1933, § 23-1602 (see O.C.G.A. § 36-11-1). 1958-59 Op. Att'y Gen. p. 379.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 609 et seq.

C.J.S. — 20 C.J.S., Counties, § 390 et seq.

ALR. — Power of city, town, or county or its officials to compromise claim, 105 ALR 170; 15 ALR2d 1359.

Waiver of, or estoppel to assert, defects in notice of claim against county or municipality, 148 ALR 637.

Local government tort liability: minority as affecting notice of claim requirement, 58 ALR4th 402.

Sufficiency of notice of claim against local political entity as regards time when accident occurred, 57 ALR5th 689.

36-11-2. Audit and registration of claims against county; issuance of order on treasurer for claim; specification of fund on which order drawn.

Except where otherwise provided by law, each county governing authority shall audit all claims against its respective county. Every such claim, or such part as may be allowed, must be registered. The county governing authority or its clerk must give the claimant an order

on the treasurer for the same; in the order, it shall specifically designate upon what particular fund such order is drawn, out of which payment is to be made. (Orig. Code 1863, § 478; Code 1868, § 540; Ga. L. 1871-2, p. 69, § 1; Code 1873, § 506; Code 1882, § 506; Civil Code 1895, § 361; Civil Code 1910, § 410; Code 1933, § 23-1601.)

JUDICIAL DECISIONS

Application to county commissioners. — When the fiscal affairs of a county are in charge of a board of county commissioners, the authority to audit and settle claims conferred by Ga. L. 1872, p. 479 (see O.C.G.A. §§ 36-5-1 (now repealed) and 36-11-2) upon the ordinary (now judge of the probate court) must be exercised by the board of county commissioners. Walker v. Stephens, 175 Ga. 405, 165 S.E. 99 (1932).

The statute applies to county commissioners when commissioners, instead of the ordinary (now judge of the probate court), have control of county affairs. Walden v. Smith, 203 Ga. 207, 45 S.E.2d 660 (1947).

Duty nondelegable. — Duty of the board of county commissioners to audit and pass upon any claims arising against the county in connection with a construction project is a duty which cannot be delegated, and the funds in controversy should not be used for the payment of any such charges before a determination of their correctness by such commissioners. McGinty v. Pickering, 180 Ga. 447, 179 S.E. 358 (1935).

Presumption that order or warrant valid. — It will be presumed that an order or warrant of the commissioners is a valid judgment, unless it shows that the commissioners had no jurisdiction to issue the order or warrant. Blue Island State Bank v. McRae, 169 Ga. 279, 150 S.E. 151 (1929).

Cited in Armistead v. MacNeill, 203 Ga. 204, 45 S.E.2d 652 (1947); DeKalb County v. Bolick, 249 Ga. 843, 295 S.E.2d 92 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 722.

C.J.S. — 20 C.J.S., Counties, § 395.

ALR. — Waiver of, or estoppel to assert, defects in notice of claim against county or municipality, 148 ALR 637.

36-11-3. When orders to be paid; registration of orders issued.

No order shall be paid until after five days from its date and delivery, unless otherwise specially ordered. In the meantime, the county governing authority may furnish the county treasurer with a full statement of all orders issued, which shall be immediately registered by him; when so registered, such orders shall be paid according to law, without further notice to the treasurer previous to the time of payment. (Orig. Code 1863, § 531; Code 1868, § 595; Code 1873, § 557; Code 1882, § 557; Civil Code 1895, § 464; Civil Code 1910, § 580; Code 1933, § 23-1605.)

JUDICIAL DECISIONS

Sections 7-4-2 and 7-4-15 not repealed and construed in pari materia. — Former Code 1933, § 23-1604 et seq. (see O.C.G.A. § 36-11-3 et seq.) did not expressly or by necessary implication repeal former Code 1933, §§ 57-101 and 57-110 (see O.C.G.A. §§ 7-4-2 and 7-4-15). The statutes all were to be considered together, and when so considered, the sections first mentioned contemplate administrative action by the county officers in regard to the order in which lawful county orders shall be paid. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475 (1942).

Failure to register a warrant drawn by the ordinary (now judge of the probate court) of a county may subordinate the payment of the warrant to that of others duly registered, but it does not render the warrant void. Neal Loan & Banking Co. v. Chastain, 121 Ga. 500, 49 S.E. 618 (1904).

Mandamus to compel furnishing of statement. — Mandamus issued requiring by virtue of this section the ordinary (now judge of the probate court) to furnish a statement of all orders drawn by a predecessor in office on funds derived from the sale of courthouse bonds. Aaron v. German, 114 Ga. 587, 40 S.E. 713 (1901) (see O.C.G.A. § 36-11-3).

Interest. — County warrant, which is a liquidated demand, even though the warrant does not express any date for payment, is as a matter of law payable on demand, when made five days after the date on which the warrant is issued, and will ordinarily bear interest from and after demand was so made. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475 (1942).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 400.

36-11-4. Order in which county debts paid.

(a) When there are enough funds to pay all outstanding orders and other forms of indebtedness due which the treasurer is authorized to pay, such debts may be paid indiscriminately without regard to their dates. When there are enough funds to pay all forms of indebtedness dated prior to some particular date, all such forms of indebtedness may likewise be paid indiscriminately. When there are insufficient funds to pay all forms of indebtedness of equal degree, they shall be paid ratably. Under all other circumstances, debts should be paid in the order of their dates.

(b) If any person holding county orders fails to present them by December 1 to the county treasurer for payment, such orders shall be postponed in favor of all orders which were so presented and were not paid for want of funds. (Orig. Code 1863, §§ 530, 532; Code 1868, §§ 594, 596; Code 1873, §§ 556, 558; Code 1882, §§ 556, 558; Civil Code 1895, §§ 463, 465; Civil Code 1910, §§ 579, 581; Code 1933, §§ 23-1604, 23-1607.)

JUDICIAL DECISIONS

Sections 7-4-2 and 7-4-15 not repealed and construed in pari materia. — Former Code 1933, § 23-1604 et seq. (see O.C.G.A. § 36-11-3 et seq.) did not expressly or by necessary implication repeal former Code 1933, §§ 57-101 and 57-110 (see O.C.G.A. §§ 7-4-2 and 7-4-15). The statutes were to be considered together, and when so considered, the sections first mentioned contemplate administrative action by the county officers in regard to the order in which lawful county orders shall be paid. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475 (1942).

Compliance with section. — Former Code 1933, § 23-1306 (see O.C.G.A. § 36-11-6) was substantially complied with by an endorsement upon the order by a designated county officer as follows: "presented for payment" on a named date - "insf. funds," meaning insufficient funds; and this was true notwithstanding it was provided by former Code 1933, §§ 23-1604 and 23-1607 (see O.C.G.A. § 36-11-4) "when there is not enough to pay all [county orders] of equal degree, they shall be paid ratably." Candler v. W.A. Neal & Son, 46 Ga. App. 625, 168 S.E. 265 (1933), aff'd, 180 Ga. 89, 178 S.E. 285 (1935).

Applicability of section when warrants aggregate sum larger than treasury. — When warrants for current expenses, which have been paid by another from the proceeds of a loan which the other person made to the county (to the rights of the several holders of which warrants such person has become subrogated), and other warrants issued by the county commissioners, aggregate a sum larger than that which the county has in the county's treasury, raised from the revenues of the year in which the various liabilities were incurred, payment must be made in accordance with the rules prescribed in former Civil Code 1895, §§ 361 et seq. and 463 et seq. (see O.C.G.A. § 36-11-2 et seq.). Butts County v. Jackson Banking Co., 129 Ga. 801, 60 S.E. 149 (1907).

Cited in Maddox v. Anchor Duck Mills, 167 Ga. 695, 146 S.E. 551 (1929).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 722.

36-11-5. Interest on orders presented and not paid.

(a) On December 1 of each year, the county treasurer and the county governing authority shall together make an entry of all orders entitled to payment which were not so presented for payment and what orders not of equal dignity have been paid instead, in whole or in part, and what other orders are entitled to payment before such nonpresented orders. Persons holding such orders who present them without receiving payment before such day may have the treasurer annually mark thereon "Presented," the day of presentation, and that they were not paid for want of funds. Such county orders, when legally issued and duly presented, as provided in this Code section, and not paid for want of funds, shall bear interest at such rate as may be prescribed by the county governing authority, by resolution duly adopted and entered upon the minutes of the county governing authority, which rate of interest shall in no event be more than 7 percent per annum from date

of entry of presentation and nonpayment for want of funds. The rate so fixed shall be plainly written or printed upon the face of the order. However, interest shall not be paid on such warrant or warrants after July 1 following the year in which they were presented unless the warrant or warrants are again presented and payment is refused for want of funds. The treasurer or keeper of county funds shall endorse on the warrant the words "Presented for payment; no funds on hand with which to pay same. This the _____ day of _____, _____."

(b) Any county order issued by any county governing authority shall bear interest at the rate specified by resolution at the time of the issuance of the order, as provided in this Code section. The rate of interest which the warrant shall thereafter bear shall not be changed or affected by any subsequent resolution or change of rate of interest that may be adopted thereafter by the county governing authority; rather the warrant shall bear the rate of interest written or printed upon the face of the order and established by the county governing authority at the time of the issuance thereof. (Orig. Code 1863, § 533; Code 1868, § 597; Code 1873, § 508; Code 1882, § 508; Civil Code 1895, § 466; Civil Code 1910, § 582; Ga. L. 1920, p. 65, § 1; Code 1933, § 23-1608; Ga. L. 1935, p. 110, §§ 1, 2; Ga. L. 1999, p. 81, § 36.)

JUDICIAL DECISIONS

Sections 7-4-2 and 7-4-15 not repealed and construed in pari materia. — Former Code 1933, § 23-1604 et seq. (see O.C.G.A. § 36-11-3 et seq.) did not expressly or by necessary implication repeal former Code 1933, §§ 57-101 and 57-110 (see O.C.G.A. §§ 7-4-2 and 7-4-15). The statutes all were to be considered together, and when so considered, the sections first mentioned contemplate administrative action by the county officers in regard to the order in which lawful county orders shall be paid. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475 (1942).

Compliance with section. — Former Code 1933, § 23-1608 (see O.C.G.A. § 36-11-5) was substantially complied with by an endorsement upon the order by a designated county officer as follows: "presented for payment" on a named date - "insf. funds," meaning insufficient funds; and this was true notwithstanding it was provided by former Code 1933, §§ 23-1604 and 23-1607 (see O.C.G.A. § 36-11-4), "when there is not enough to pay all [county orders] of equal degree, they shall be paid ratably." Candler v. W.A. Neal & Son, 46 Ga. App. 625, 168 S.E. 265 (1933), aff'd, 180 Ga. 89, 178 S.E. 285 (1935).

When interest begins. — County warrants do not bear interest, unless the warrants are presented for payment and payment is not made for want of funds, and an entry of such presentation and such nonpayment is made by the county treasurer on the warrant, with the date of presentation. When the above requirements are complied with, such warrants bear interest from the date of entry of such presentation and nonpayment until the first day of July of the year following in which such entry is made. Americus Grocery Co. v. Pitts Banking Co., 169 Ga. 70, 149 S.E. 776 (1929).

Former Code 1933, § 23-1608 (see O.C.G.A. § 36-11-5) assumed that the county treasurer would pay the warrant when payment was demanded, and if the treasurer failed to pay, contemplated that interest would run in virtue of former

Code 1933, §§ 57-101 and 57-110 (see O.C.G.A. §§ 7-4-2 and 7-4-15) from the date of the demand. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475 (1942).

Interest if funds available. — Provision in former Code 1933, § 23-1608 (see O.C.G.A. § 36-11-5) that county orders when legally issued and duly presented as therein provided "and not paid for want of funds, shall bear interest" if endorsed by the treasurer as set forth, did not mean that interest allowed generally on liquidated demands as under former Code 1933, §§ 57-101 and 57-110 (see O.C.G.A. §§ 7-4-2 and 7-4-15), would be disallowed if sufficient available funds were in hand to pay the warrant. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475 (1942).

Recovery of full value of instrument. — In a suit by the endorsee against the endorser to recover upon the contract of endorsement, the plaintiff is entitled to recover the full face value of the order with any interest legally due thereon as provided in this section. Candler v. W.A. Neal & Son, 46 Ga. App. 625, 168 S.E. 265 (1933), aff'd, 180 Ga. 89, 178 S.E. 285 (1935) (see O.C.G.A. § 36-11-5).

Treasurer cannot go behind judgment. — Order drawn by the ordinary (now judge of the probate court) of a county on the treasurer for the payment of a debt due by the county is evidence of an adjudication by the ordinary (now judge of the probate court) that the amount stated in the order is due; and the treasurer cannot go behind this judgment, except for fraud or mistake as to the amount of the indebtedness. Thompson v. Shurling, 184 Ga. 836, 193 S.E. 880 (1937).

Duty of treasurer when payment refused. — Under this section, an official duty of a county treasurer, to whom a regularly issued warrant drawn by the ordinary (now judge of the probate court) having control of the finances of the county is presented for payment, when payment is refused, is to make the entry on the warrant prescribed by the statute. Thompson v. Shurling, 184 Ga. 836, 193 S.E. 880 (1937) (see O.C.G.A. § 36-11-5).

Orders drawn upon nonexistent funds. — This section clearly contemplates the existence of county orders drawn upon funds not in esse, and the warrants are not for that reason illegal. Walker v. Stephens, 175 Ga. 405, 165 S.E. 99 (1932) (see O.C.G.A. § 36-11-5).

Mandamus. — Court did not err in granting mandamus absolute requiring county treasurer to make entry on a county warrant issued by the ordinary (now judge of the probate court) in favor of petitioner indicating that the warrant was prevented and not paid for by lack of funds. Thompson v. Shurling, 184 Ga. 836, 193 S.E. 880 (1937).

Cited in Hartley v. Nash, 157 Ga. 402, 121 S.E. 295 (1924).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 405.

36-11-6. Negotiability of county orders.

All county orders are transferable by delivery or endorsement; and the endorser shall be liable according to the terms of his endorsement, as in commercial paper, provided that no transfer can take place so as to prevent a treasurer from setting off any sum that the payee may owe the county at the date of the order. (Orig. Code 1863, § 534; Code 1868, § 598; Code 1873, § 560; Code 1882, § 560; Civil Code 1895, § 467; Civil Code 1910, § 583; Code 1933, § 23-1606.)

JUDICIAL DECISIONS

Sections 7-4-2 and 7-4-15 not repealed and construed in pari materia. — Former Code 1933, § 23-1604 et seq. (see O.C.G.A. § 36-11-3 et seq.) did not expressly or by necessary implication repeal former Code 1933, §§ 57-101 and 57-110 (see O.C.G.A. §§ 7-4-2 and 7-4-15). The statutes all were to be considered together, and when so considered, the sections first mentioned contemplate administrative action by the county officers in regard to the order in which lawful county orders shall be paid. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475 (1942).

Effect of endorsement. — Payee may have authorized the delivery of a warrant to the payee's son-in-law only for the purpose of safekeeping, yet, if at that time the warrant bore the payee's genuine signature as an endorsement thereon, the payee thereby gave to the depositary such external indicia of the right of disposing of the warrant that the depositary could, by pledging the same to an innocent person for a present consideration, divest the payee's title. Lilly v. Citizens' Bank & Trust Co., 44 Ga. App. 653, 162 S.E. 639 (1932).

Discounting of warrants. — Inasmuch as the law authorizes a sale of county warrants and provides the method by which the vendor shall be liable to the vendee, and how the county shall be liable for interest, there is nothing illegal in the arrangement which was made between the county and the banks in discounting the legal warrants issued by the county. Southern Ry. v. Fulton County, 170 Ga. 248, 152 S.E. 567 (1930).

An order or warrant is prima-facie evidence of indebtedness on the part of the county to the payee, transferee, or endorsee, of the validity of the claim for which the warrant is issued, and the burden of proving the warrant invalid is upon the commissioners or the ordinary (now judge of the probate court), as the case may be. Blue Island State Bank v. McRae, 169 Ga. 279, 150 S.E. 151 (1929).

Subrogation of rights of maker of illegal loan to rights of warrant holder. — When a county incurs a lawful liability for a current expense, and issues a warrant on the treasury for the warrant's payment, and subsequently procures another to pay the warrant out of a loan which the other person makes to the county, upon disaffirmance of the illegal loan by the county the lender is subrogated to the rights of the warrant holder whose warrant was paid out of the proceeds of the illegal loan. Butts County v. Jackson Banking Co., 129 Ga. 801, 60 S.E. 149 (1907).

RESEARCH REFERENCES

C.J.S. — 10 C.J.S., Bills and Notes, §§ 127, 129.

36-11-7. Satisfaction of judgment against county.

The private property of the citizens of a county shall not be bound by any judgment obtained against the county. Such judgment, if binding, shall be satisfied from money raised by lawful taxation. (Orig. Code 1863, § 480; Code 1868, § 542; Code 1873, § 508; Code 1882, § 508; Civil Code 1895, § 363; Civil Code 1910, § 412; Code 1933, § 23-1603.)

JUDICIAL DECISIONS

Appropriation of moneys for liability policy premiums and for damages exceeding policy limits. — Board of commissioners must appropriate moneys

for insurance premiums on any policy which might pay a plaintiff if plaintiff's suit is ultimately successful in plaintiff's claim against the county or must appropriate moneys to pay actual damages should plaintiff's recovery exceed the policy limits. Dodson v. Floyd, 529 F. Supp. 1056 (N.D. Ga. 1981).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, §§ 419, 420.

ALR. — County as subject to garnishment process, 60 ALR 823.

CHAPTER 12

SUPERVISION AND SUPPORT OF PAUPERS

Sec.
36-12-1. General supervision of paupers.
36-12-2. Eligibility for benefits.
36-12-3. Duty of relatives to support paupers generally; right of county to recover from relatives for provisions furnished.
36-12-4. Liability of person sending pauper to county for support purposes.
36-12-5. Interment of deceased indigents.

Cross references. — Provision of hospital care for the indigent generally, § 31-8-1. Establishment of county departments of family and children's services, § 49-3-1.

36-12-1. General supervision of paupers.

The general supervision of all paupers is vested in the county governing authority. (Laws 1792, Cobb's 1851 Digest, p. 346; Laws 1818, Cobb's 1851 Digest, p. 347; Code 1863, § 710; Code 1868, § 776; Code 1873, § 754; Code 1882, § 754; Civil Code 1895, § 426; Civil Code 1910, § 541; Code 1933, § 23-2101.)

JUDICIAL DECISIONS

Inquiry as to chargeability. — Under this section, until there has been some inquiry into the circumstances of the poor who will be treated as paupers and who shall become chargeable to the county, no persons can be properly said to be so chargeable. Justices of Inferior Court v. Chapman, 16 Ga. 89 (1854) (see O.C.G.A. § 36-12-1).

Confederate soldiers, referred to in the expression "indigent pensioners," as used in Ga. L. 1909, p. 17, § 2, cannot be classed as paupers. Clark v. Walton, 137 Ga. 277, 73 S.E. 392 (1911).

RESEARCH REFERENCES

ALR. — Presumption and burden of proof of settlement in action by one town or poor district against another for support of pauper, 99 ALR 457.

Tort liability of municipality or other governmental subdivision in connection with poor relief activities, 134 ALR 762.

36-12-2. Eligibility for benefits.

No person who is able to maintain himself by labor or who has sufficient means shall be entitled to the benefits of the provision for the poor. In cases where women are unable to maintain themselves and the helpless children they may have, they may be aided to the extent required in the furnishing of food, clothing, or shelter. (Orig. Code 1863,

§ 715; Code 1868, § 785; Code 1873, § 763; Code 1882, § 763; Civil Code 1895, § 438; Civil Code 1910, § 553; Code 1933, § 23-2301.)

JUDICIAL DECISIONS

Levy valid even if Act unconstitutional. — An item of a county tax levy for the "support of paupers," as provided under the Constitution, will not be enjoined on the ground that it is null and void, even if, as alleged, the moneys are to be expended as provided under an unconstitutional Act, unless it also appears that the levy itself is for some reason invalid. If the Act is invalid, the tax must nevertheless be levied. J.G. McCrory Co. v. Board of Comm'rs of Rds. & Revenues, 177 Ga. 242, 170 S.E. 18 (1933) (decided under former Civil Code 1910, §§ 550 and 553.).

36-12-3. Duty of relatives to support paupers generally; right of county to recover from relatives for provisions furnished.

The father, mother, or child of any pauper contemplated by Code Section 36-12-2, if sufficiently able, shall support the pauper. Any county having provided for such pauper upon the failure of such relatives to do so may bring an action against such relatives of full age and recover for the provisions so furnished. The certificate of the judge of the probate court that the person was poor and was unable to sustain himself and that he was maintained at the expense of the county shall be presumptive evidence of such maintenance and the costs thereof. (Orig. Code 1863, §§ 716, 717; Code 1868, §§ 786, 787; Code 1873, §§ 764, 765; Code 1882, §§ 764, 765; Civil Code 1895, §§ 439, 440; Civil Code 1910, §§ 554, 555; Code 1933, §§ 23-2302, 23-2303.)

Cross references. — Duty of parents to support child, § 19-7-2. Child Support Recovery Act, § 19-11-1 et seq. Uniform Reciprocal Enforcement of Support Act, § 19-11-40 et seq.

JUDICIAL DECISIONS

Considering former Code 1933, §§ 23-2302 and 23-2303 (see O.C.G.A. § 36-12-3) in connection with cognate sections, the words "any pauper contemplated by former Code 1933, § 23-2301 (see O.C.G.A. § 36-12-2)," refer to one who is completely destitute. Citizens & S. Nat'l Bank v. Cook, 182 Ga. 240, 185 S.E. 318 (1936).

When mother must support children. — On the death of a father the duty of supporting the children devolves upon the mother, when the mother has the ability, and the infant child is without means, and is unable to earn a maintenance. Thompson v. Georgia Ry. & Power Co., 163 Ga. 598, 136 S.E. 895 (1927).

Child must be destitute. — Child has no right to recover under this section unless the child is completely destitute. Crane v. Crane, 225 Ga. 605, 170 S.E.2d 392 (1969) (see O.C.G.A. § 36-12-3).

Mother's right of support from child. — Destitute mother being a pauper within the meaning of this section and having a son of sufficient ability to support her, has a right to such support from the son, and when the destitute mother has the right to support from her son, a court of equity may provide a remedy to enforce

the right. Citizens & S. Nat'l Bank v. Cook, 182 Ga. 240, 185 S.E. 318 (1936).

Wrongful birth damages. — In action for damages under federal wrongful birth claim, extraordinary expenses of the child's care are recoverable beyond the child's eighteenth birthday if the child will be completely destitute as Georgia law imposes the duty to support on parents of a destitute adult. Campbell v. United States, 795 F. Supp. 1118 (N.D. Ga. 1990), aff'd, 962 F.2d 1579 (11th Cir. 1992), cert. denied, 507 U.S. 909, 113 S. Ct. 1254, 122 L. Ed. 2d 653 (1993).

Confederate soldiers, referred to in the expression "indigent pensioners," as used in Ga. L. 1909, p. 173, § 2, cannot be classed as paupers. Clark v. Walton, 137 Ga. 277, 73 S.E. 392 (1911).

Jurisdiction of petition for wife's support. — If a petition by a wife for support from her husband is considered as an action for alimony against the defendant husband, the petition must be brought in the county of his residence, and a court would be without jurisdiction of the cause in another county. Davenport v. Davenport, 215 Ga. 496, 111 S.E.2d 57 (1959).

Cited in Owens v. Parham, 350 F. Supp. 598 (N.D. Ga. 1972); Still v. Still, 199 Ga. App. 723, 405 S.E.2d 762 (1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, §§ 70 et seq., 79 et seq.

C.J.S. — 41 C.J.S., Husband and Wife, §§ 16, 66 et seq. 67A C.J.S., Parent and Child, §§ 44, 45.

ALR. — Liability of parent for dental services to minor child, 7 ALR 1070.

Criminal liability of father for failure to support child who is living apart from him without his consent, 23 ALR 864.

Survival of statutory liability for support of relative, 96 ALR 537.

Nature of care contemplated by statute imposing general duty to care for indigent relatives, 92 ALR2d 348.

Constitutionality of statutory provision requiring reimbursement of public by child for financial assistance to aged parents, 75 ALR3d 1159.

36-12-4. Liability of person sending pauper to county for support purposes.

Any inhabitant of any county, city, town, or village in or out of this state who sends a pauper to some county in this state by paying the expense of his transportation or otherwise has him removed for the purpose of burdening some other community shall be personally liable for the support of the pauper in the county where he locates. If the person who transports a pauper is insolvent or does not respond to such demand from any cause, the county from which the transportation took place shall be liable. (Orig. Code 1863, §§ 718, 719; Code 1868, §§ 789, 790; Code 1873, §§ 767, 768; Code 1882, §§ 767, 768; Civil Code 1895, §§ 442, 443; Civil Code 1910, §§ 557, 558; Code 1933, §§ 23-2305, 23-2306.)

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 76.

36-12-5. Interment of deceased indigents.

(a) Whenever any person dies in this state and the decedent, his family, and his immediate kindred are indigent and unable to provide for his decent interment, the governing authority of the county wherein the death occurs shall make available from county funds a sum sufficient to provide a decent interment of the deceased indigent person or to reimburse such person as may have expended the cost thereof voluntarily, the exact amount thereof to be determined by the governing authority of the county.

(b) The Department of Corrections is authorized to reimburse the governing authority of the county where expenditures have been made in accordance with this Code section for the burial of any inmate under the authority, jurisdiction, or control of the Department of Corrections; but in no case shall the governing authority of the county be entitled to reimbursement where the decedent was in the custody of a county correctional institution or other county correctional facility. (Ga. L. 1863-64, p. 60, § 1; Code 1868, § 788; Code 1873, § 766; Code 1882, § 766; Civil Code 1895, § 441; Civil Code 1910, § 556; Code 1933, § 23-2304; Ga. L. 1967, p. 616, § 1; Ga. L. 1972, p. 971, § 1; Ga. L. 1974, p. 616, § 1; Ga. L. 1978, p. 1048, § 1; Ga. L. 1980, p. 722, § 1; Ga. L. 1982, p. 2107, § 34; Ga. L. 1983, p. 3, § 27; Ga. L. 1985, p. 265, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1991, p. 431, §§ 1, 2.)

Cross references. — Embalming, transportation, and care of bodies generally, T. 31, C. 21. Notifying of commissioner of corrections and county coroner upon sudden death of inmate or death of inmate under unusual circumstances, § 42-5-7.

JUDICIAL DECISIONS

Coroner's right to reimbursement. — When a coroner, not officially but as an individual, caused dead paupers, the victims of a storm, to be buried decently, the coroner was entitled to be reimbursed by the county by virtue of this section. Walker v. Sheftall, 73 Ga. 806 (1884) (see O.C.G.A. § 36-12-5).

OPINIONS OF THE ATTORNEY GENERAL

Nature of county's responsibility. — County has fulfilled the county's responsibility under this section when the county makes available from county funds at least $75.00, but not more than $125.00, to provide a decent interment for a deceased pauper; whether these funds are used to provide a lined pine coffin, plus normal burial expenses, or any other means of decent interment, is at the option of the county. 1971 Op. Att'y Gen. No. U71-129 (decided prior to 1991 amendment deleting provisions relating to minimum and maximum amounts from O.C.G.A. § 36-12-5).

CHAPTER 13

BUILDING, ELECTRICAL, AND OTHER CODES

Sec.
36-13-1. Creation, adoption, amendment, and repeal of codes.
36-13-2. Matters which may be covered by county codes.
36-13-3. Adoption of codes by reference to national or regional codes.
36-13-4. Contracts with other political subdivisions to issue building permits and enforce codes.
36-13-5. Appointment of inspectors and assistants.
36-13-5.1. Issuance of citations for violation in certain counties; jurisdiction; warrant for arrest for failure to appear in response to citation.
36-13-6. Promulgation of rules and regulations concerning permits and inspections; establishment of fees or charges.
36-13-7. Areas to which codes, rules, and regulations may be made applicable.
36-13-8. Notice and hearing prior to enactment of codes, rules, or regulations.
36-13-9. Appropriation and expenditure of funds.
36-13-10. Remedies for actual or proposed violations of codes, rules, or regulations.
36-13-11. Compliance as prerequisite to issuance of permit; failure to secure required permit.
36-13-12. Criminal penalty for violations of codes, rules, or regulations.

Cross references. — Adoption by counties and municipalities of the Georgia State Plumbing Code, the Georgia State Electrical Code, § 8-2-20 et seq. Local Government Code Enforcement Boards, § 36-74-1 et seq.

JUDICIAL DECISIONS

Authority of county to impose additional tax on building permits. — Ga. L. 1960, p. 560, § 1 et seq. does not give a county the authority to impose a tax or charge in addition to all charges currently imposed for building permits, when those funds are allocated directly to the board of education. DeKalb County v. Brown Bldrs. Co., 227 Ga. 777, 183 S.E.2d 367 (1971).

36-13-1. Creation, adoption, amendment, and repeal of codes.

The county governing authority in this state is authorized to make, adopt, amend, and repeal building, housing, electrical, plumbing, gas, and other similar codes relating to the construction, livability, sanitation, erection, equipment, alteration, repair, occupancy, or removal of buildings and structures located outside of the corporate limits of any municipality in the county. (Ga. L. 1961, p. 560, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Buildings, §§ 2 et seq., 44.

ALR. — Rights of permittee under illegally issued building permit, 6 ALR2d 960.

Zoning authority as estopped from re-

voking legally issued building permit, 26 ALR5th 736.

36-13-2. Matters which may be covered by county codes.

The codes authorized in Code Section 36-13-1 may embrace such matters as the preparation and submission of plans and specifications; issuance of permits; standards governing the kind, quality, and performance of materials, equipment, and workmanship; establishment of fire zones; fireproofing; means of egress and ingress; floor area per occupant; and sanitary facilities and usage proceedings in connection with unsafe, unsanitary, or inadequate structures. The enumeration in this Code section shall not be construed as being exclusive. (Ga. L. 1961, p. 560, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Buildings, § 13 et seq.

C.J.S. — 101A C.J.S., Zoning and Land Planning, § 252 et seq.

36-13-3. Adoption of codes by reference to national or regional codes.

The codes authorized in Code Section 36-13-1 may be adopted by reference to national or regional codes. (Ga. L. 1961, p. 560, § 3.)

JUDICIAL DECISIONS

Cited in Wilson v. Auto-Owners Ins. Co., 159 Ga. App. 315, 283 S.E.2d 308 (1981).

36-13-4. Contracts with other political subdivisions to issue building permits and enforce codes.

The county governing authority is permitted to contract with municipalities and other political subdivisions of the state possessing the authority to issue building permits and to enforce building, electrical, plumbing, gas, housing, and other similar codes, in order to administer efficiently the powers granted under this chapter. (Ga. L. 1961, p. 560, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 423 et seq.

36-13-5. Appointment of inspectors and assistants.

The county governing authority shall have the authority to appoint building, electrical, plumbing, gas, and housing inspectors for its county and to appoint such other assistants as the authority may deem necessary. (Ga. L. 1961, p. 560, § 5.)

36-13-5.1. Issuance of citations for violation in certain counties; jurisdiction; warrant for arrest for failure to appear in response to citation.

In all counties of this state having a population of 550,000 or more according to the United States decennial census of 1970 or any future such census, any employee who is authorized to enforce any county code, ordinance, regulation, rule, or other order, including such related ordinances, codes, and regulations as drainage regulations, soil erosion and sedimentation control regulations, subdivision and zoning regulations, water and sewer regulations, and any other land development or construction regulations of such county, shall have the authority to issue citations to any person who shall violate any such county code, ordinance, regulation, or order which shall be in effect in such counties. Such citations shall command the appearance of such person at a designated regular session of a court in such county having the jurisdiction of a commitment court throughout the entire county. At such time and place such court shall act as a court of inquiry with all the powers and authorities as specified in Code Section 17-8-5. In the event that any such person shall fail to appear in response to a citation, a warrant shall be issued for the arrest of such person for violation of such county code, ordinance, regulation, rule, or order without the necessity of any further action. (Ga. L. 1981, p. 3261, § 1; Code 1981, § 36-13-5.1, enacted by Ga. L. 1982, p. 2107, § 35; Ga. L. 1983, p. 3, § 27; Ga. L. 1987, p. 3, § 36.)

36-13-6. Promulgation of rules and regulations concerning permits and inspections; establishment of fees or charges.

The county governing authority shall have the authority to make rules and regulations concerning permits for and inspections of construction equipment and the alteration, repair, or removal of buildings, signs, and other structures outside the corporate limits of municipalities located in its county. It may prescribe fees or charges for permits and inspections, which fees shall be fixed and charged by the governing authority and shall be paid to the county treasurer by the applicant for such permits or inspections. (Ga. L. 1961, p. 560, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Buildings, § 9 et seq.

C.J.S. — 101A C.J.S., Zoning and Land Planning, §§ 62, 63, 126, 252.

36-13-7. Areas to which codes, rules, and regulations may be made applicable.

The county governing authority shall have the authority to make such codes, rules, and regulations as are permitted under this chapter for:

(1) The entire unincorporated area of the county;

(2) Any militia district within the unincorporated area of the county;

(3) Any land lot;

(4) Any land and water areas 500 feet wide on either side of any state or county highway or any section of such highway within the unincorporated area of the county;

(5) Any land or water areas 500 feet wide on either side of any water line of the stream or water reservoir or section thereof within the unincorporated area of the county; or

(6) Any portion of the unincorporated area of the county lying within a specified distance of the boundaries of a municipality in the county. (Ga. L. 1961, p. 560, § 8.)

36-13-8. Notice and hearing prior to enactment of codes, rules, or regulations.

Before enacting any of the codes, rules, or regulations permitted in this chapter, the county governing authority shall hold a public hearing thereon. At least 15 days' notice of the time and place of the hearing shall be published in a newspaper of general circulation in the county. (Ga. L. 1961, p. 560, § 7.)

RESEARCH REFERENCES

C.J.S. — 101A C.J.S., Zoning and Land Planning, § 12.

ALR. — What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 ALR4th 822.

36-13-9. Appropriation and expenditure of funds.

The county governing authorities are authorized to appropriate and expend funds for the purposes of this chapter. (Ga. L. 1961, p. 560, § 12.)

36-13-10. Remedies for actual or proposed violations of codes, rules, or regulations.

When any violation of any of the codes, rules, and regulations which are adopted by the county governing authority under this chapter is or is proposed to be committed, the inspectors appointed under this chapter, the county attorney, some other appropriate authority of the county, or any adjacent or neighboring property owner who would be damaged by the violation, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent, correct, or abate the violation or threatened violation. (Ga. L. 1961, p. 560, § 11.)

RESEARCH REFERENCES

C.J.S. — 101A C.J.S., Zoning and Land Planning, § 396 et seq.

36-13-11. Compliance as prerequisite to issuance of permit; failure to secure required permit.

Full compliance with all rules, regulations, and requirements set up under this chapter shall be a prerequisite to issuance of any permit. Failure to secure such permit as is required is declared to be a misdemeanor. (Ga. L. 1961, p. 560, § 9.)

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Buildings, § 8 et seq.

C.J.S. — 101A C.J.S., Zoning and Land Planning, § 252 et seq.

36-13-12. Criminal penalty for violations of codes, rules, or regulations.

The violation of any of the codes, rules, and regulations adopted by the county governing authority under this chapter is declared to be a misdemeanor. Any person violating any such codes, rules, and regulations shall be guilty of a misdemeanor. Each and every day such violation continues shall be deemed a separate offense. (Ga. L. 1961, p. 560, § 10.)

RESEARCH REFERENCES

C.J.S. — 101A C.J.S., Zoning and Land Planning, § 412 et seq.

CHAPTER 14

COUNTY BRIDGES

Sec.
36-14-1. Erection of bridges across navigable streams.
36-14-2. Building and maintaining bridges over rivers bordering adjacent states.
36-14-3. Contracts with federal government for bridges across streams bordering land ceded to United States.

Cross references. — Acquisition of property by counties and municipalities for transportation purposes generally, T. 32, Ch. 3. Bridge repair bonds, § 32-4-70 et seq.

36-14-1. Erection of bridges across navigable streams.

The consent of the state is given to and authority is vested in the county governing authority to erect bridges across the navigable streams that lie wholly within the state, whenever in the judgment of the county governing authority the public interest may be subserved thereby, upon its compliance with the law of Congress requiring the approval of the secretary of transportation and the chief of engineers of the United States, as embodied in the statutes of the United States passed by the Fifty-fifth Congress and approved March 3, 1899. (Ga. L. 1904, p. 100, § 1; Civil Code 1910, § 427; Code 1933, § 23-2004.)

U.S. Code. — The federal Act referred to in this Code section is codified at 33 U.S.C. § 401, 403.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 44 et seq., 92 et seq.

C.J.S. — 11 C.J.S., Bridges, § 4 et seq.

36-14-2. Building and maintaining bridges over rivers bordering adjacent states.

Counties lying adjacent to any river on the border or forming the boundary between this state and another shall have the same power, acting by and through the proper county authorities, to build and maintain bridges over such river as the counties now have to build and maintain bridges over streams lying wholly within their borders, provided that this power shall not be exercised except to cooperate with the proper authorities of the adjacent state in building and maintaining

such bridges, on the principle that each state is to build simultaneously from its own bank to the middle of the river and afterwards to maintain and keep up the part of the bridge which it has built; and provided, further, that no bridge shall be erected under this Code section at any point where the river exceeds, at low-water mark, 2,000 feet in breadth. (Ga. L. 1895, p. 78, § 1; Civil Code 1895, § 372; Civil Code 1910, § 424; Ga. L. 1920, p. 62, § 1; Code 1933, § 23-2001; Ga. L. 1987, p. 3, § 36.)

JUDICIAL DECISIONS

Cited in Havird v. Richmond County, 47 Ga. App. 580, 171 S.E. 220 (1933).

36-14-3. Contracts with federal government for bridges across streams bordering land ceded to United States.

(a) The county governing authority may contract and pay out of the funds of the county such sums of money as it deems equitable and just to the authorities of the United States for the county's fair proportion of the cost of building any bridge which it deems necessary to erect across any stream dividing the county or some part thereof from lands over which the jurisdiction has been ceded to the government of the United States for any purpose, provided that it shall thereafter be the duty of the authorities of the United States to keep such bridges in repair, to renew them as often as may be necessary, and to keep them open for the free and uninterrupted travel of the public.

(b) The United States is vested with full and complete jurisdiction over grounds necessary for the erection of piers and approaches to such bridges on each side of such streams, so far as may be necessary for the erection, repair, and protection of the bridges and approaches. (Ga. L. 1895, p. 76, §§ 1, 2; Civil Code 1895, §§ 373, 374; Civil Code 1910, §§ 425, 426; Code 1933, §§ 23-2002, 23-2003.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 45.

CHAPTER 15

COUNTY LAW LIBRARY

Sec.
36-15-1. Board of trustees created in each county; composition; chairperson; quorum.
36-15-2. Secretary-treasurer of board; designation and compensation of librarian.
36-15-3. Bond of secretary-treasurer.
36-15-4. Powers and duties of board of trustees generally.
36-15-5. Control, deposit, and investment of funds.
36-15-6. Receipt and investment of money and property.
36-15-7. Use of funds.
36-15-8. Furnishing of space and utilities by county governing authority.
36-15-9. Collection of additional costs in court cases; amount; determination of need as prerequisite to collection; collection in certain criminal cases.
36-15-10. Prior actions, decisions, contracts, and purchases of boards prior to March 19, 1971, ratified.
36-15-11. Receipt and disbursement of funds by counties having population of 950,000 or more.
36-15-12. Applicability to city court of city having population of 300,000 or more.

Cross references. — County and regional public libraries, § 20-5-40 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Assistant district attorneys eligible to serve on library board. — Assistant district attorneys are practicing attorneys within the meaning of Ga. L. 1971, p. 180, § 1 et seq.; therefore, an assistant district attorney is eligible to serve as a member of the board of trustees of a county law library. 1973 Op. Att'y Gen. No. U73-112 (see O.C.G.A. Ch. 15, T. 36).

36-15-1. Board of trustees created in each county; composition; chairperson; quorum.

There is created in each county in this state a board to be known as the board of trustees of the county law library, hereafter referred to as the board. The board shall consist of the chief judge of the superior court of the circuit in which the county is located, the judge of the probate court, the senior judge of the state court, if any, a solicitor-general of the state court, if any, the clerk of the superior court, and two practicing attorneys of the county. The practicing attorneys shall be selected by the other trustees and shall serve at their pleasure. All of the trustees shall serve without pay. The chief judge of the superior court shall be chairperson of the board. A majority of the members of the board shall constitute a quorum for the purpose of

transacting all business that may come before the board. (Ga. L. 1971, p. 180, § 1; Ga. L. 1973, p. 430, § 1; Ga. L. 1997, p. 392, § 1.)

36-15-2. Secretary-treasurer of board; designation and compensation of librarian.

(a) There is created an office to be known as secretary-treasurer of the board of trustees of the county law library in each county. The secretary-treasurer shall be selected and appointed by the board and shall serve at the pleasure of the board. The board may appoint one of its own members as secretary-treasurer or, in its discretion, may designate some other person to act as secretary-treasurer of the board. The secretary-treasurer of the board shall perform the duties provided for the treasurer in this chapter.

(b) The board of trustees may designate the judge of the probate court or a deputy clerk of the superior court of each county to act as librarian; any such official shall not receive any additional compensation for the performance of such duties. The board, however, in its discretion, may designate some other person to act as librarian and shall fix the compensation for such person. (Ga. L. 1971, p. 180, § 2; Ga. L. 1973, p. 430, § 2; Ga. L. 1976, p. 700, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Dual capacity prohibited. — Librarian designated and compensated under this section may not serve in dual capacity as librarian-secretary. 1975 Op. Att'y Gen. No. U75-16 (see O.C.G.A. § 36-15-2).

36-15-3. Bond of secretary-treasurer.

The secretary-treasurer of the board shall give a good and sufficient surety bond, payable to the county, in such an amount as may be determined by the board, to account faithfully for all funds received and disbursed by him. The premium on the bond shall be paid out of the county law library fund. (Ga. L. 1971, p. 180, § 8.)

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 160.

36-15-4. Powers and duties of board of trustees generally.

The board of trustees is given the following powers and duties:

(1) To provide for the collection of all money provided for in this chapter;

(2) To select the books, reports, texts, and periodicals;

(3) To make all necessary rules and regulations governing the use of the library;

(4) To keep records of all its meetings and proceedings;

(5) To exercise all other powers necessary for the proper administration of this chapter; and

(6) To enter into agreements with the boards of trustees of other county law libraries within the same judicial circuit for the purpose of pooling funds to purchase books, reports, texts, and periodicals and to purchase or lease computer related research equipment and programs; to provide for the joint use of such books, reports, texts, periodicals, and computer related research equipment and programs within the same judicial circuit; and to provide where said books, reports, texts, periodicals, and computer related research equipment and programs may be maintained. (Ga. L. 1971, p. 180, § 4; Ga. L. 1994, p. 1923, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "computer related" was substituted for "computer-related" in three places in paragraph (6).

36-15-5. Control, deposit, and investment of funds.

The board shall have control of the funds provided for in this chapter. All funds received shall be deposited in a special account to be known as the county law library fund. The board shall have authority to expend the funds in accordance with this chapter and to invest any of the funds so received in any investments which are legal investments for fiduciaries in this state. (Ga. L. 1971, p. 180, § 3.)

36-15-6. Receipt and investment of money and property.

The board may take, by gift, grant, devise, or bequest, any money, real or personal property, or other thing of value and may hold or invest the same for the uses and purposes of the library. (Ga. L. 1971, p. 180, § 5.)

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 219 et seq.

36-15-7. Use of funds.

(a) The money paid into the hands of the treasurer of the board of trustees of the county law library shall be used for the purchase of law books, reports, texts, periodicals, supplies, desks, and equipment and

for the maintenance, upkeep, and operation of the law library, including the services of a librarian and, within the discretion of the board of trustees, payment for purchases made by a county's superior court, state court, probate court, magistrate court, or juvenile court, and for the purchase or leasing of computer related legal research equipment and programs, and, at the discretion of the county governing authority, for the establishment and maintenance of the codification of county ordinances. However, the amount transferred to the county governing authority for codification pursuant to this subsection shall not exceed the cost of establishing or maintaining the codification.

(b) In addition to the uses specified in subsection (a) of this Code section, the board of trustees of a county law library shall be authorized to use funds to establish a law library or libraries for the judges of the superior courts of the judicial circuit and for the judges of the state court in which the county lies. A request for the establishment of one or more such libraries shall be made to the board of trustees by the chief judge of the judicial circuit with the assent of a majority of the superior court judges of the circuit or by the chief judge of the state court of the county with the assent of a majority of the state court judges of the county. Additionally, the probate judge, chief magistrate, presiding juvenile court judge, or any chief judge of any county court may make a similar request. It shall be in the discretion of the board of trustees of each county whether to grant such a request. Any one or more county boards of trustees in the judicial circuit may participate in the establishment of the law library or libraries and, for the purpose of such participation, may enter into agreements regarding the proportional share of expenditures to be borne by each county board of trustees. Purchases made from county law library funds under this subsection shall not duplicate the law books and materials supplied to each judge by the state or by other sources. Such purchases shall become the property of the judge who requested the purchase and shall be passed on to his or her successor in office.

(c) In the event the board of trustees determines in its discretion that it has excess funds, such funds as may be designated by the board of trustees shall be granted to charitable tax exempt organizations which provide civil legal representation for low-income people. Any remaining excess funds shall be turned over to the county commissioners, and said funds shall be used by the county commissioners for the purchase of fixtures and furnishings for the courthouse.

(d) Except as provided in subsection (b) of this Code section, all law books, reports, texts, and periodicals purchased by the use of gifts and from the funds of the county law library shall become the property of the county. (Ga. L. 1971, p. 180, § 7; Ga. L. 1973, p. 430, § 4; Ga. L. 1982, p. 1103, § 1; Ga. L. 1983, p. 3, § 27; Ga. L. 1987, p. 843, § 1; Ga.

L. 1994, p. 1923, § 2; Ga. L. 1997, p. 392, § 2; Ga. L. 2000, p. 865, § 1; Ga. L. 2002, p. 785, § 1; Ga. L. 2010, p. 555, § 1/HB 858.)

The 2010 amendment, effective May 27, 2010, inserted "and, within the discretion of the board of trustees, payment for purchases made by a county's superior court, state court, probate court, magistrate court, or juvenile court" in the first sentence of subsection (a); and, in subsection (b), added the third sentence, substituted "such a request" for "the request" at the end of the fourth sentence, and deleted "of superior court or state court" preceding "by the state" in the next to the last sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "computer related" was substituted for "computer-related" in subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

Subscription to computer assisted legal research. — County law libraries may execute base subscription agreements for computer assisted legal research and purchase or lease related equipment. 1983 Op. Att'y Gen. No. U83-22.

36-15-8. Furnishing of space and utilities by county governing authority.

The county governing authority shall furnish necessary space, offices, lights, heat, and water for the maintenance of the county law library. (Ga. L. 1976, p. 700, § 3.)

36-15-9. Collection of additional costs in court cases; amount; determination of need as prerequisite to collection; collection in certain criminal cases.

(a) For the purpose of providing funds for those uses specified in Code Section 36-15-7, a sum not to exceed $5.00, in addition to all other legal costs, may be charged and collected in each action or case, either civil or criminal, including, without limiting the generality of the foregoing, all adoptions, certiorari, applications by personal representatives for leave to sell or reinvest, trade name registrations, applications for change of name, and all other proceedings of civil or criminal or quasi-criminal nature, filed in the superior, state, probate, and any other courts of record, except county recorders' courts or municipal courts. The amount of such additional costs to be charged and collected, if any, in each such case shall be fixed by the chief judge of the superior court of the circuit in which such county is located. Such additional costs shall not be charged and collected unless the chief judge first determines that a need exists for a law library in the county. The clerk of each and every such court in such counties in which such a law library is established shall collect such fees and remit the same to the treasurer of the board of trustees of the county law library of the county in which the case was brought, on the first day of each month. Where

fees collected by the treasurer have been allocated for the purpose of establishing or maintaining the codification of county ordinances, the allocated amount shall in turn be remitted by the treasurer to the county governing authority for said purpose on a monthly basis or as otherwise agreed by the treasurer and the county governing authority. The county ordinance code provided for in subsection (a) of Code Section 36-15-7 shall be maintained by the county governing authority. When the costs in criminal cases are not collected, the cost provided in this Code section shall be paid from the fines and forfeitures fund of the court in which the case is filed, before any other disbursement or distribution of such fines or forfeitures is made.

(a.1) In any county having a population of more than 550,000 according to the United States decennial census of 1980 or any future such census, the power and authority provided in subsection (a) of this Code section for the chief judge shall be exercised by the superior court judge who has the most service as a superior court judge.

(b) A case, within the meaning of subsection (a) of this Code section, shall mean and be construed as any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned, whether such matter is contested or not.

(c) Reserved.

(d) Notwithstanding that provision of subsection (a) of this Code section which excepts recorders' courts from the requirement of charging and collecting the additional costs provided for by said subsection (a), said subsection (a) and subsection (b) of this Code section shall be applicable to the recorder's court of each county of this state having a population of not less than 200,000 nor more than 275,000 according to the United States decennial census of 1980 or any future such census.

(e) Notwithstanding that provision of subsection (a) of this Code section which excepts county recorders' courts and municipal courts from the requirement of charging and collecting the additional costs provided for by that subsection (a), subsections (a) and (b) of this Code section shall apply to any municipal court of a municipality if the governing authority thereof, by ordinance or resolutions, approves the charging and collecting of such costs pursuant to subsections (a) and (b) of this Code section.

(f) The sums provided for in subsection (a) of this Code section for actions, cases, or proceedings civil in nature which are filed in the superior courts shall be collected in accordance with the provisions of subsection (b) of Code Section 15-6-77.

(g) In counties where a law library authorized by this chapter has not been established, upon request of the county governing authority, the

chief judge of a circuit shall direct that the fees authorized by this Code section be charged and collected for the purpose of the establishment and maintenance of the codification of county ordinances. However, the amount transferred to the county governing authority pursuant to this subsection shall not exceed the cost of establishing or maintaining the codification. The clerk of each and every court in such counties in which costs are collected for the purpose of carrying out the provisions of this subsection shall remit the same to the county governing authority on the first day of each month. The county ordinance code provided for in this subsection shall be maintained by the county governing authority. When the costs in criminal cases are not collected, the cost provided in this Code section shall be paid from the fines and forfeitures fund of the court in which the case is filed before any other disbursement or distribution of such fines or forfeitures is made. (Ga. L. 1971, p. 180, §§ 6, 9; Ga. L. 1973, p. 430, § 3; Ga. L. 1976, p. 700, § 2; Ga. L. 1982, p. 520, §§ 1, 2; Ga. L. 1982, p. 591, § 1; Ga. L. 1982, p. 1103, § 2; Ga. L. 1983, p. 3, § 27; Ga. L. 1985, p. 999, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1987, p. 843, § 2; Ga. L. 1991, p. 1324, § 6; Ga. L. 1993, p. 91, § 36; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 1923, § 3; Ga. L. 1997, p. 392, §§ 3, 4; Ga. L. 1999, p. 81, § 36; Ga. L. 2000, p. 865, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "recorders'" was substituted for "recorder's" in subsection (e).

OPINIONS OF THE ATTORNEY GENERAL

Costs not authorized in addition to costs for filing articles of incorporation. — Clerks of superior courts are not authorized to collect costs in support of county law libraries as authorized in Ga. L. 1976, p. 700, § 2 (see O.C.G.A. § 36-15-9) in addition to those costs set forth in former Code 1933, § 22-803 (see, now, O.C.G.A. § 14-2-122(1)) for the filing of articles of incorporation. 1977 Op. Att'y Gen. No. 77-23.

Surcharge is an additional penalty to be added to the fine. 1996 Op. Att'y Gen. No. U96-8.

Section applicable to probate courts. — Probate court is expressly authorized to collect costs in support of county law libraries in all actions specified by O.C.G.A. § 36-15-9. 1988 Op. Att'y Gen. No. U88-3.

Actions filed under Family Violence Act. — Clerk of the superior court would be authorized to collect costs in support of county law libraries as authorized by the chief judge in any action filed under the Family Violence Act, O.C.G.A. § 19-13-1 et seq. 1988 Op. Att'y Gen. No. U88-11.

36-15-10. Prior actions, decisions, contracts, and purchases of boards prior to March 19, 1971, ratified.

All actions, decisions, contracts, and purchases made by any board of trustees of a county law library or any other person charged with the responsibility of operating or maintaining a county law library under any law of this state enacted prior to March 19, 1971, are ratified. (Ga. L. 1971, p. 180, § 10.)

36-15-11. Receipt and disbursement of funds by counties having population of 950,000 or more.

Notwithstanding any other provision of this chapter, in all counties of this state having a population of 950,000 or more according to the United States decennial census of 1980 or any future such census, all funds collected by reason of this chapter shall be paid into the general treasury of such county, to be used for lawful purposes of the courts of the county, including the maintenance of a county law library; and there shall be no county law library fund. All disbursements for the purposes of this chapter shall be in accordance with the budget procedures which may be established in such counties. In such counties there shall be no treasurer of the board of trustees. The county governing authorities of such counties shall report to the board of trustees, not later than January 15 of each year, the amount of money collected in the preceding calendar year by the assessment of such fees as are provided in this chapter. (Ga. L. 1981, p. 959, § 1; Ga. L. 2001, p. 1031, § 1; Ga. L. 2010, p. 555, § 2/HB 858.)

The 2010 amendment, effective July 1, 2012, substituted "950,000" for "700,000" in the first sentence. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 555, § 3/HB 858, not codified by the General Assembly, provides that the 2010 amendment shall become effective on July 1, 2012, the same date on which the United States decennial census of 2010 shall become effective for purposes of Code Section 36-15-11.

36-15-12. Applicability to city court of city having population of 300,000 or more.

Notwithstanding any other provision of this chapter, this chapter shall not apply to a city court, which is authorized to try state traffic offenses, of any city of this state having a population of 300,000 or more according to the United States decennial census of 1980 or any future such census. (Ga. L. 1982, p. 586, § 1; Code 1981, § 36-15-12, enacted by Ga. L. 1982, p. 586, § 2.)

CHAPTER 16

COUNTY HISTORICAL CONTAINER

Sec.
36-16-1. Furnishing of historical container.
36-16-2. Receipt of historical data for preservation in container.
36-16-3. Determination of admissibility of documents submitted for filing; deposit of documents relating to soldiers and widows.
36-16-4. Maintenance of record and index; fee for filing of documents.
36-16-5. Applicability of chapter.

36-16-1. Furnishing of historical container.

The county governing authority shall furnish, purchase, or cause to be furnished or purchased a suitable filing case or other container to be placed in the office of the judge of the probate court of the county and labeled "Historical." (Ga. L. 1935, p. 383, § 1.)

36-16-2. Receipt of historical data for preservation in container.

The judge of the probate court of the county shall be required to receive from any responsible citizen or citizens any data of a historical nature and place the same on file in the historical container provided for in Code Section 36-16-1, for safe preservation and historical reference. The matter to be entered for preservation must be of general interest and not of a personal nature; it may include records, proceedings, or minutes of any religious body or organization; school records not otherwise preserved; records of civic, patriotic, or fraternal organizations; and records of purely community affairs when of such nature as to be of general interest and not otherwise recorded by court procedure. (Ga. L. 1935, p. 383, § 2.)

36-16-3. Determination of admissibility of documents submitted for filing; deposit of documents relating to soldiers and widows.

The judge of the probate court and the county board of education are made the sole judges of the admissibility of any matter or document which may be submitted to the judge of the probate court for filing, should any question arise as to the historical value of such matter or document so submitted; and the judge of the probate court and the board of education sitting in regular session shall have authority to accept or reject any matter so submitted, provided that the judge of the probate court shall be required to deposit in the historical container all documents in his office pertaining to records of Confederate soldiers and widows of such soldiers, as well as soldiers and their surviving

spouses of all other wars of our nation, a record of which he may have in his office, and to make proper notations thereof in the book of record. (Ga. L. 1935, p. 383, § 4.)

36-16-4. Maintenance of record and index; fee for filing of documents.

The judge of the probate court shall be required to keep a suitable record and index in a book prepared for that purpose of all matter placed in the historical container, with notations as to the nature of the matter on file, by whom, and when placed on file. He shall be entitled to a fee of 25¢, payable by the person filing such historical matter, for each article or document so deposited by such person for preservation with him, provided that the county historian may submit documents for preservation without payment of a fee to the judge of the probate court. (Ga. L. 1935, p. 383, §§ 3, 4.)

36-16-5. Applicability of chapter.

This chapter shall not become operative in any county of this state until it has been adopted and recommended by a majority vote of two successive regular grand juries of the county. (Ga. L. 1935, p. 383, § 5.)

CHAPTER 17

GRANTS OF STATE FUNDS TO COUNTIES

Article 1

Grants for Public Purposes Based upon Road Mileage

Sec.
36-17-1. Legislative purpose and intent.
36-17-2. Computation of individual county grants.
36-17-3. Disbursement and expenditure of funds.

Article 2

Grants to Counties for County Roads and Maintenance

36-17-20. Authorization of grants.
36-17-21. Allocation of funds; grant of tax credit to homesteads as prerequisite to receipt of funds; use of surplus funds.
Sec.
36-17-22. Allocation of funds; grant of credit on certain tangible property taxes as prerequisite to receipt of funds.
36-17-23. Limits on granting of credits; claim and certification of credits by taxpayer; recovery of credits erroneously or illegally granted; payment of tax liability prerequisite to credit.
36-17-24. Credits and surplus to be shown on tax bills; disbursal of funds on certification of state revenue commissioner.
36-17-25. Administration of article by state revenue commissioner; promulgation of rules and regulations.

Cross references. — Grants by state to county and municipal hospital authorities, § 31-7-94.

ARTICLE 1

GRANTS FOR PUBLIC PURPOSES BASED UPON ROAD MILEAGE

36-17-1. Legislative purpose and intent.

It is declared to be the purpose and intent of the General Assembly that state funds be made available to the governing authorities of the counties of this state to be expended for any public purposes. (Ga. L. 1967, p. 888, § 1.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 390 et seq.

36-17-2. Computation of individual county grants.

To the extent that funds are made available by the budget authorities pursuant to the general appropriations Acts or any other laws for the

purposes set out in Code Section 36-17-1, except for the grants to counties which are appropriated as a part of the appropriation to the Department of Transportation designated "For grants to counties for aid in county road construction and maintenance," the Office of the State Treasurer is authorized and directed to grant such funds to the counties of this state in the same proportion which the total public road mileage of each county bears to the total public road mileage in the state, as such mileage information is furnished by the Department of Transportation. The computation of individual county grants, as provided for in this Code section, shall be prepared and certified by the state treasurer, who shall make such payments. (Ga. L. 1967, p. 888, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the middle of the first sentence; and substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" near the end of the last sentence.

OPINIONS OF THE ATTORNEY GENERAL

Use of funds for social security. — Appropriated grant moneys allocated to a county under the authority of this section may be withheld by the Department of Administrative Services and released to the Employees' Retirement System of Georgia to protect the system from delinquent social security reports and remittances for which the county is liable. 1975 Op. Att'y Gen. No. 75-65 (see O.C.G.A. § 36-17-2).

36-17-3. Disbursement and expenditure of funds.

Funds distributed under this article by the Office of the State Treasurer shall be paid to the counties in the name of the county treasurer or other fiscal authority authorized to receive county funds. Such funds shall be expended by the county only for the purposes prescribed in Code Section 36-17-1. (Ga. L. 1967, p. 888, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the first sentence.

ARTICLE 2

GRANTS TO COUNTIES FOR COUNTY ROADS AND MAINTENANCE

Cross references. — Schedule of amounts of money to be appropriated to counties for use exclusively for construction and maintenance of public roads, § 48-14-3.

JUDICIAL DECISIONS

Constitutionality of Ga. L. 1973, p. 475. — Georgia Laws 1973, p. 475, which authorized the grant of state funds "to aid in the construction of county roads and maintenance thereof," to the counties of the state, upon each county's providing a property tax credit in accordance with formulas prescribed in the Act, was a constitutionally permissible legislative grant, and did not violate the due process or equal protection provisions of the Constitution of Georgia or the United States. Brown v. Wright, 231 Ga. 686, 203 S.E.2d 487 (1974).

Provision in Ga. L. 1973, p. 475 that no county was eligible to receive any funds unless a tax credit was given on homesteads first and then on tangible property (exclusive of motor vehicles and trailers), in accordance with the formulas prescribed in the Act, was not a forbidden gratuity within the meaning of the Georgia Constitution. Brown v. Wright, 231 Ga. 686, 203 S.E.2d 487 (1974).

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 390 et seq.

36-17-20. Authorization of grants.

Pursuant to the authority granted to the General Assembly in Article III, Section IX, Paragraph II(c) of the Constitution of Georgia and in order to provide for a more effective management and fiscal administration of the state and pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia, in order to provide funds to counties to aid in the construction and maintenance of county roads and, in addition to funds provided pursuant to other laws, there may be allotted to each county annually for county road construction and maintenance certain grants as provided in Code Sections 36-17-21 and 36-17-22. (Ga. L. 1973, p. 475, § 1; Ga. L. 1975, p. 1079, § 1; Ga. L. 1983, p. 3, § 57; Ga. L. 1985, p. 149, § 36.)

36-17-21. Allocation of funds; grant of tax credit to homesteads as prerequisite to receipt of funds; use of surplus funds.

(a) In any year in which the General Assembly appropriates by line item, and with reference to this Code section, funds necessary to provide grants to counties to aid in the construction and maintenance of county roads, such grants shall be allotted to each county pro rata according to each county's share of the total number of homesteads in the state for the immediately preceding year. For purposes of this Code section and Code Section 36-17-22, the term "homestead" shall mean and include all that tangible property upon which an ad valorem property tax homestead exemption was claimed and allowed.

(b) In order to provide better fiscal management, the funds provided pursuant to this Code section are intended to be utilized for the relief of

ad valorem taxation on tangible property. No county shall be entitled to receive any of the funds provided for in this Code section unless and until a credit against county ad valorem property taxes levied and expended by the county governing authority is granted by the governing authority of the county to each homestead located within the county. Each credit shall equal an amount computed as follows: the amount of the grant allotted, pursuant to this Code section, to the county to aid in the construction and maintenance of county roads, divided by the number of homesteads in the county.

(c) No credit granted pursuant to this Code section shall exceed one-half of the credit recipient's total tax liability for county ad valorem property taxes levied and expended by the county governing authority.

(d) If a surplus remains from the funds allotted to such county by this Code section after complying with this Code section, such remaining funds shall be deemed appropriated and allotted to the county under Code Section 36-17-22. (Ga. L. 1973, p. 475, § 3; Ga. L. 1975, p. 1079, § 2; Ga. L. 1982, p. 3, § 36.)

36-17-22. Allocation of funds; grant of credit on certain tangible property taxes as prerequisite to receipt of funds.

(a) In any year in which the General Assembly appropriates by line item, and with reference to this Code section, funds necessary to provide grants to counties to aid in the construction and maintenance of county roads, such grants shall be allotted to each county pro rata according to each county's share of the total number of homesteads in the state for the immediately preceding year.

(b) In order to provide better fiscal management, the funds provided pursuant to this Code section are intended to be utilized for the relief of ad valorem taxation on tangible property. No county shall be entitled to receive any of the funds provided for in this Code section unless and until a credit against county ad valorem property taxes levied and expended by the county governing authority is granted by the governing authority of the county to all eligible tangible property, as defined in subsection (c) of this Code section, except motor vehicles and trailers, located within the county. Each credit shall equal an amount computed as follows: a pro rata share of the sum of the grant allotted, pursuant to this Code section, to the county to aid in the construction and maintenance of county roads and the surplus, if any, from the funds allotted to such county by subsection (a) of Code Section 36-17-21, after compliance by the county with the provisions of subsection (b) of Code Section 36-17-21.

(c) As used in this Code section, the term "eligible tangible property" means all tangible property except that tangible property required to be

returned to and assessed by the state revenue commissioner pursuant to statutes passed by the General Assembly under the authority of Article VII, Section I, Paragraph III of the Constitution of Georgia. (Ga. L. 1975, p. 1079, § 3; Ga. L. 1982, p. 3, § 36.)

36-17-23. Limits on granting of credits; claim and certification of credits by taxpayer; recovery of credits erroneously or illegally granted; payment of tax liability prerequisite to credit.

(a) No credit or combination of credits granted pursuant to this article shall exceed the lesser of (1) $1,000.00 or (2) the credit recipient's total tax liability for county ad valorem property taxes levied and expended by the county governing authority. No credit authorized by such Code sections shall be granted unless the taxpayer claims his entitlement to such credit and certifies that the sum of all such credits so claimed by him does not exceed $1,000.00. The state revenue commissioner shall provide by regulation for the forms and procedures by which taxpayers shall claim credits and certify the sum thereof. The governing authorities of the various counties shall make available to the taxing authorities of such counties funds sufficient to defray the administrative costs of this article. Any person who, with intent to receive credit not authorized by this article, claims a credit to which he is not lawfully entitled or falsely certifies the sum of credits claimed by him shall be guilty of a misdemeanor. Any credit erroneously or illegally granted, whether due to negligence or any other cause, shall be recoverable by the county granting such credit in the same fashion as any other delinquent property tax.

(b) No credit authorized under this article shall be granted to any taxpayer unless the taxpayer pays his then current tax liability for county ad valorem property taxes levied and expended by the county governing authority on or before the date such liability becomes due. However, in order to comply with this subsection, the governing authority of any county may, by appropriate resolution, extend the date that such tax liability becomes due. (Ga. L. 1975, p. 1079, § 4.)

36-17-24. Credits and surplus to be shown on tax bills; disbursal of funds on certification of state revenue commissioner.

The taxing authority of each county receiving funds pursuant to this article shall show in a prominent manner on the tax bill of each ad valorem taxpayer the dollar amount of credit against ad valorem property taxes which the taxpayer is receiving as a result of the funds allocated and shall show that such credit is a result of the passage of

such Code sections by the General Assembly. Each such tax bill shall also show in a prominent manner the amount of any surplus, from the funds allotted to the county by such Code sections, after compliance by the county with subsection (b) of Code Section 36-17-21 and subsection (b) of Code Section 36-17-22, retained by the governing authority of the county. The form of the notice shall be as prescribed by the state revenue commissioner, who shall determine and certify to the appropriate state fiscal officer the amount of funds to which each county is entitled pursuant to this article. The determination of the state revenue commissioner shall be final and the appropriate state fiscal officer shall disburse the funds pursuant to the certification. (Ga. L. 1973, p. 475, § 4; Ga. L. 1975, p. 1079, § 5.)

36-17-25. Administration of article by state revenue commissioner; promulgation of rules and regulations.

It shall be the duty of the state revenue commissioner to administer this article. The commissioner shall have the authority to promulgate such rules and regulations as he may deem necessary for the effective administration of this article. (Ga. L. 1975, p. 1079, § 6.)

CHAPTER 18

REGULATION OF CABLE TELEVISION SYSTEMS

Sec.
36-18-1. "Cable television system" defined.
36-18-2. Powers of governing authorities.
36-18-3. Restriction on authority of counties and municipalities to regulate.
36-18-4. Intent and construction of chapter.
36-18-5. Applicability of chapter.

Cross references. — Theft of telecommunication services, § 46-5-2 et seq.

RESEARCH REFERENCES

ALR. — Validity and construction of provision of Cable Communications Policy Act (47 USC § 541(a)(2)) allowing cable companies access to utility easements on private property, 113 ALR Fed. 523.

36-18-1. "Cable television system" defined.

As used in this chapter, the term "cable television system" means a nonbroadcast facility consisting of a set of transmission paths and associated generation, reception, transmission, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers the signals of one or more television broadcast stations and programs received via satellite, microwave, video tape, or video discs or produced by the franchised cable system. (Ga. L. 1981, p. 865, § 1.)

36-18-2. Powers of governing authorities.

The governing authority of each county in this state is authorized to limit the operation of cable television systems within its territorial limits, except as limited by Code Section 36-18-3, to operators licensed and franchised by the county; to grant, in its sole discretion, one or more franchise licenses for the operation of cable television systems within the territorial limits of that county, except as limited by Code Section 36-18-3; and to regulate by ordinance or resolution the operation of cable television systems licensed and franchised by that county. The governing authority of each such county, in connection with the grant of such franchises, is further authorized to charge franchise fees to cable television systems for the right to operate the systems within the unincorporated areas of the county and within any incorporated areas which are subject to the limitation contained in Code Section 36-18-3.

Cable television system franchise fees shall be negotiated between each county and each franchisee, in an amount not to exceed that amount authorized under applicable federal law and regulations. (Ga. L. 1981, p. 865, § 2.)

Cross references. — Taxation of special franchises, § 48-5-420 et seq.

Law reviews. — For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

JUDICIAL DECISIONS

No authorization of municipalities. — O.C.G.A. § 36-18-2 confers authority only upon the governing authority of each county in the state, and there is no similar authorization of municipalities. Cable Holdings of Battlefield, Inc. v. Lookout Cable Servs., Inc., 178 Ga. App. 456, 343 S.E.2d 737 (1986).

Cited in Cable Holdings of Battlefield, Inc. v. Cooke, 764 F.2d 1466 (11th Cir. 1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Franchises from Public Entities, §§ 36, 37.

C.J.S. — 37 C.J.S., Franchises, §§ 27, 28.

ALR. — Validity and construction of municipal ordinances regulating community antenna television service (CATV), 41 ALR3d 384.

Standing to contest award of, or acquisition of right to operate, cable TV certificate, license, or franchise in state court action, 78 ALR3d 1255.

36-18-3. Restriction on authority of counties and municipalities to regulate.

A county shall neither grant a franchise nor collect a franchise fee for the operation of cable television systems within the corporate limits of any municipality except by agreement with the municipality. A municipality shall neither grant a franchise nor collect a franchise fee for the operation of cable television systems within the unincorporated area of a county except by agreement with the county. (Ga. L. 1981, p. 865, § 3.)

Law reviews. — For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Franchises from Public Entities, §§ 36, 37.

C.J.S. — 37 C.J.S., Franchises, §§ 27, 28.

36-18-4. Intent and construction of chapter.

It is the intent of this chapter to confirm expressly the authority of counties to grant franchises for, and to regulate by ordinance or

resolution, cable television systems within their territorial limits, except as limited by Code Section 36-18-3. Nothing in this chapter shall be construed to impair any cable television system franchise license lawfully issued by a county or municipality prior to April 9, 1981; and any such license shall be entitled to the benefits of this chapter. (Ga. L. 1981, p. 865, § 4.)

JUDICIAL DECISIONS

Pre-1981 franchises which were not lawfully issued, as the franchises purported to be "exclusive," were not entitled to the benefits bestowed by O.C.G.A. Ch. 18, T. 36. Cable Holdings of Battlefield, Inc. v. Lookout Cable Servs., Inc., 178 Ga. App. 456, 343 S.E.2d 737 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Franchises from Public Entities, §§ 36, 37.

C.J.S. — 37 C.J.S., Franchises, §§ 27, 28.

36-18-5. Applicability of chapter.

This chapter shall not apply to any cable television system owned or operated by a city, a county, or a school system as to operations within the geographical area of such city, county, or school system. (Ga. L. 1981, p. 865, § 5; Ga. L. 2004, p. 990, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d, Franchises from Public Entities, §§ 36, 37.

C.J.S. — 37 C.J.S., Franchises, §§ 27, 28.

CHAPTER 19

IMMUNITY FROM ANTITRUST LIABILITY

36-19-1 and 36-19-2. Redesignated.

Editor's notes. — Chapter 19 of Title 36 and §§ 36-19-1 and 36-19-2, relating to immunity from antitrust liability, were redesignated as Chapter 65 of Title 36 and §§ 36-65-1 and 36-65-2, respectively, by Ga. L. 1985, p. 149, § 36.

CHAPTER 20

COUNTY LEADERSHIP TRAINING

Sec.
36-20-1. Short title.
36-20-2. Legislative findings and intent.
36-20-3. Definitions.
36-20-4. Training of elected members of county governing authority.
36-20-5. Georgia County Leadership Academy.
36-20-6. Board supervision of Georgia County Leadership Academy.
36-20-7. Membership of board.
36-20-8. Acceptance by board of federal, state, or local appropriations, grants, or contributions; authority to enter into contracts, leases, or agreements.
36-20-9. Report on accomplishments of academy.

Law reviews. — For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990).

36-20-1. Short title.

This chapter shall be known and may be cited as the "Georgia County Leadership Act." (Code 1981, § 36-20-1, enacted by Ga. L. 1990, p. 1642, § 1.)

36-20-2. Legislative findings and intent.

The General Assembly finds and declares that it is in the best interests of the citizens of this state to require newly elected members of a county governing authority, prior to taking office, to attend a course of training and education on matters pertaining to the administration and operation of county government. The purpose of such course shall be to instruct such individuals in the powers, duties, and responsibilities of their positions of public trust. (Code 1981, § 36-20-2, enacted by Ga. L. 1990, p. 1642, § 1.)

36-20-3. Definitions.

As used in this chapter, the term:

(1) "Academy" means the Georgia County Leadership Academy.

(2) "Board" means the Board of the Georgia County Leadership Academy.

(3) "County governing authority" means the governing authority as defined in paragraph (7) of Code Section 1-3-3 and an elected chief executive officer of a county.

(4) "State" means the State of Georgia and any department, board, bureau, commission, or other agency thereof. (Code 1981, § 36-20-3, enacted by Ga. L. 1990, p. 1642, § 1.)

36-20-4. Training of elected members of county governing authority.

(a) All persons elected as members of a county governing authority who were not serving as members of a county governing authority on July 1, 1990, shall enroll in, attend, and satisfactorily complete a course of training and education of at least 18 hours on matters pertaining to the administration and operations of county governments. Such course of training and education shall include, but not be limited to, orientation in local government finance and budgeting; methods of taxation; planning; public works and utilities; parks and recreation; environmental management; public safety, health, and welfare; personnel management; responsiveness to the community; the ethics, duties, and responsibilities of members of a county governing authority or a chief executive officer; and such other matters as may be deemed necessary and appropriate by the academy.

(b) All expenses incurred by a newly elected member of a county governing authority related to the course of training and education authorized and required by subsection (a) of this Code section, including the reasonable costs of housing, travel, and meals, shall be paid from public funds appropriated for such purposes. All expenses not paid for by state funds shall be paid from county funds by the county governing authority whose newly elected member or members shall attend such course. (Code 1981, § 36-20-4, enacted by Ga. L. 1990, p. 1642, § 1.)

36-20-5. Georgia County Leadership Academy.

(a) There is created and established the Georgia County Leadership Academy. Except as otherwise provided in Code Section 36-20-4, all costs of operating and conducting the academy shall be paid for from public funds appropriated for such purposes.

(b) The academy shall have the power, duty, and authority to design, implement, and administer the course of training and education required by Code Section 36-20-4.

(c) The initial course of training and education required by Code Section 36-20-4 shall be conducted by the academy on the Tuesday after the first Monday in November of 1990 and completed before January 1, 1991. Subsequent courses shall be conducted by the academy biennially between the Tuesday after the first Monday in November and before

January 1 of the following year or as otherwise changed by general law. The academy shall have sole responsibility for determining the exact date or dates the course of training and education shall be conducted.

(d) The academy shall establish guidelines and procedures to permit any person elected or appointed as a member of a county governing authority after January 1 of a calendar year or any person who is unable to attend or complete the course of training and education when offered by the academy due to medical disability, providential cause, or any other reason deemed sufficient by the academy, to comply with the requirements of Code Section 36-20-4.

(e) The academy shall perform such other duties and have such other powers and authority as may be necessary and proper or as prescribed by general law. (Code 1981, § 36-20-5, enacted by Ga. L. 1990, p. 1642, § 1.)

36-20-6. Board supervision of Georgia County Leadership Academy.

(a) The academy shall be under the direction and supervision of the board of the Georgia County Leadership Academy. The board shall have the power and duty to organize, administer, control, oversee, and advise the academy so that the academy is operated in accordance with the provisions of this article.

(b) The academy is assigned to the Department of Community Affairs for administrative purposes only, as prescribed in Code Section 50-4-3. (Code 1981, § 36-20-6, enacted by Ga. L. 1990, p. 1642, § 1.)

36-20-7. Membership of board.

The board shall consist of seven members and shall be composed of the commissioner of the Department of Community Affairs, the director of the Carl Vinson Institute of Government of the University of Georgia, the administrator of Governmental Training of the Carl Vinson Institute of Government of the University of Georgia, the president of the Association County Commissioners of Georgia, the executive director of the Association County Commissioners of Georgia, and two members appointed by the Governor. Members of the board appointed by the Governor shall serve for four-year terms. (Code 1981, § 36-20-7, enacted by Ga. L. 1990, p. 1642, § 1.)

36-20-8. Acceptance by board of federal, state, or local appropriations, grants, or contributions; authority to enter into contracts, leases, or agreements.

(a) The board may accept appropriations, grants, gifts, donations, or contributions from the federal government; the state government; any

county, municipal, or local government; any board, bureau, commission, agency, or establishment of any such government; any other organization, firm, or corporation, public or private; and any individual or groups of individuals in furtherance of the services, purposes, duties, responsibilities, or functions vested in the board and academy.

(b) The board is authorized to make such contracts, leases, or agreements as may be necessary and convenient to carry out the duties and purposes for which the board is created. The board is authorized to enter into contracts, leases, or agreements with any person, firm, or corporation, public or private, upon such terms and for such purposes as may be deemed advisable by the board. (Code 1981, § 36-20-8, enacted by Ga. L. 1990, p. 1642, § 1.)

36-20-9. Report on accomplishments of academy.

On or before February 1 of each year, the director of the Carl Vinson Institute of Government, on behalf of the board, shall make a report to the Governor, the chairman of the Senate State and Local Governmental Operations Committee, and the chairman of the State Planning and Community Affairs Committee of the House of Representatives. The report shall include a summary of the accomplishments of the academy during the preceding calendar year, including, but not limited to, the total number of members of a county governing authority who attended the course of training and education offered by the academy; an outline of the academy's programs for the current calendar year; an evaluation of the programs and services offered by the academy; and recommendations, if any, for legislation as may be necessary to improve the programs and services offered by the academy. (Code 1981, § 36-20-9, enacted by Ga. L. 1990, p. 10, § 1; Ga. L. 1995, p. 10, § 36.)

CHAPTER 21

GROUP HEALTH BENEFITS PROGRAM

Sec.		Sec.	
36-21-1.	Legislative intent.	36-21-6.	Investment of funds.
36-21-2.	Definitions.	36-21-7.	Funds not subject to process, levy, or attachment; nonassignability.
36-21-3.	Corporation governed by a board of directors; powers, duties, and operations; bond; administrative expenses.	36-21-8.	Chapter exempt from regulation under Title 33.
36-21-4.	Annual audits.	36-21-9.	Tax-exempt status.
36-21-5.	Establishment of benefit plans.	36-21-10.	State debt not created.

Cross references. — Health care plans, T. 33, C. 20.

36-21-1. Legislative intent.

It is declared to be the intent of the General Assembly that a method be provided whereby counties and certain other entities of this state may, in the discretion of their respective governing bodies, provide group health and other employee benefits to their employees through a common administrative and investment system. Such a system based on joint participation will permit counties and other entities, regardless of size, to provide certain benefits to their employees, will reduce overall administrative costs which might be prohibitive if undertaken individually, and will make possible better investment opportunities. It is intended that this chapter be liberally construed to effectuate this intent. (Code 1981, § 36-21-1, enacted by Ga. L. 1999, p. 1190, § 1.)

36-21-2. Definitions.

As used in this chapter, the term:

(1) "Benefit system" or "system" means the plan or plans of employee benefits offered and administered pursuant to this chapter.

(2) "Board" means the board of directors of the ACCG Group Health Benefits Program, Inc.

(3) "Contract" means a contract executed pursuant to this chapter between the board and a county.

(4) "Corporation" means the ACCG Group Health Benefits Program, Inc., a corporation established under Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," created to provide benefits pursuant to this chapter.

(5) "County" means the group health benefits program operated by the corporation; the Association County Commissioners of Georgia and any affiliate; any Georgia county government; any consolidated city-county government; or any public authority, commission, board, or similar body created or activated by an Act of the General Assembly or by resolution or ordinance of the county governing authority, individually or jointly with any other political subdivision or subdivisions of the State of Georgia, pursuant to the Constitution or an Act of the General Assembly and which carries out its function on a county-wide basis, a multicounty basis, or wholly within the unincorporated area of a county.

(6) "Employee" means any salaried or hourly rated person employed by a county. Notwithstanding any laws to the contrary, the term also includes any appointed or elected member of the governing authority of a county, the chief legal officer and any associate legal officer, and any other elected or appointed county official.

(7) "Employee benefits" means group health benefits, group short-term disability benefits, group death benefits, group accidental death and dismemberment benefits, and such other benefits as from time to time the board may deem advisable.

(8) "Member county" means a county which has contracted to become a member of the benefit system as provided for in this chapter. (Code 1981, § 36-21-2, enacted by Ga. L. 1999, p. 1190, § 1.)

36-21-3. Corporation governed by a board of directors; powers, duties, and operations; bond; administrative expenses.

(a) Any county in this state may enter into a contract with the board for the purpose of providing employee benefits to its employees.

(b) The corporation shall be governed by a board of directors, which shall be appointed and shall serve in accordance with the bylaws of the corporation. The board shall be authorized to operate and administer the benefit system in accordance with its bylaws and such other rules and regulations as may be established by the board as necessary or desirable for the administration of the benefit system.

(c) The board shall maintain a fidelity bond, and errors and omissions coverage or other appropriate liability insurance, in an amount deemed sufficient by the board.

(d) The administrative expenses of the board, including all operational expenses, fees, compensation, and other costs, shall be paid from funds held by it and may be chargeable by it to either principal or income or both, as determined by it, as of any valuation date. Further, the board shall have the authority to allocate expenses among member

counties on the basis of costs. (Code 1981, § 36-21-3, enacted by Ga. L. 1999, p. 1190, § 1.)

36-21-4. Annual audits.

The benefit system authorized under this chapter shall have an annual audit of its books and accounts performed by a certified public accountant. Such audit shall be conducted in accordance with generally accepted accounting principles. A copy of such audit shall be made available to member counties. (Code 1981, § 36-21-4, enacted by Ga. L. 1999, p. 1190, § 1.)

36-21-5. Establishment of benefit plans.

(a)(1) The board has the power to establish one or more plans which may be adopted by any county that meets the criteria established by the board. The employees to be covered, the benefits to be provided, and the terms and conditions for benefits shall be provided in the plan. A county is empowered to adopt such a plan by ordinance and to execute an agreement with the board to provide employee benefits as provided in the plan. The agreement and plan entered into by each member county may constitute a separate plan, unless the contract between the board and one or more counties specifically provides that funds of the counties are to be pooled and treated as a single plan. A plan providing employee benefits may provide for the method of funding such benefits through the use of insurance, self-funding, or otherwise.

(2) Any agreement between the board and a county which provides for self-funded benefits shall contain a provision that such benefits are to be provided, to the extent fixed in the plan, by the county and that the corporation does not guarantee the benefits.

(b) The board is authorized to specify in the plan reasonable employee classifications.

(c) Counties are authorized to appropriate funds to provide the benefits specified in such plan and to pay their portion of the administrative costs of the board in administering the system. Each county is authorized to pay the total contribution on behalf of its employees or to provide that a portion be deducted from the salaries of participating employees.

(d) Contributions paid by a county shall be paid from county funds which are on hand or which will be collected in the year the contribution is made and shall not be deemed to create a debt of the county. (Code 1981, § 36-21-5, enacted by Ga. L. 1999, p. 1190, § 1.)

36-21-6. Investment of funds.

The board is authorized to invest and reinvest funds held by it, in accordance with the bylaws of the corporation, in any investments which are legal investments for domestic insurance companies under the laws of this state or in any investments authorized for trustees of private employee benefit plans by the federal Employees Retirement Income Security Act of 1974, as amended. (Code 1981, § 36-21-6, enacted by Ga. L. 1999, p. 1190, § 1.)

36-21-7. Funds not subject to process, levy, or attachment; nonassignability.

Funds held by the board of trustees or for its account shall not be subject to process, levy, or attachment; nor shall benefits arising under this chapter or any contract pursuant to this chapter be assignable unless otherwise specifically permitted under the plan of benefits. (Code 1981, § 36-21-7, enacted by Ga. L. 1999, p. 1190, § 1.)

36-21-8. Chapter exempt from regulation under Title 33.

The provision of employee benefits pursuant to this chapter shall not be subject to regulation under Title 33. (Code 1981, § 36-21-8, enacted by Ga. L. 1999, p. 1190, § 1.)

36-21-9. Tax-exempt status.

The employee benefit system shall be exempt from state and local taxes and fees. (Code 1981, § 36-21-9, enacted by Ga. L. 1999, p. 1190, § 1.)

36-21-10. State debt not created.

Nothing in this chapter shall create a debt of the State of Georgia. (Code 1981, § 36-21-10, enacted by Ga. L. 1999, p. 1190, § 1.)

CHAPTER 22

LAND CONSERVATION

36-22-1 through 36-22-15. Redesignated.

Editor's notes. — Code Sections 36-22-1 through 36-22-4 and Code Sections 36-22-8 through 36-22-15, relating to land conservation, were redesignated as Chapter 6A of Title 12 by Ga. L. 2008, p. 90, § 1-1/HB 1176, effective July 1, 2008.

Code Sections 36-22-5 through 36-22-7 were previously reserved and repealed by Ga. L. 2005, p. 175, § 2/HB 98, effective April 14, 2005, and were based on Code 1981, §§ 36-22-5 through 36-22-7, enacted by Ga. L. 2000, p. 392, § 1.

CHAPTERS 23 THROUGH 29

Reserved

Provisions Applicable to Municipal Corporations Only

CHAPTER 30

GENERAL PROVISIONS

Sec.
36-30-1. Meaning of terms "city," "town," "municipality," or "village."
36-30-2. Management and disposition of property.
36-30-3. Ordinances of a council not to bind succeeding councils; exceptions.
36-30-4. Eligibility of members of municipal councils or boards of aldermen for other municipal offices.
36-30-5. Inclusion of residency in annexed territory in computing period of residence necessary to qualify for office.
36-30-6. Voting upon questions by interested councilmembers.
36-30-7. Authorization and procedure for surrender of corporate charter.
36-30-7.1. Inactive municipalities.
36-30-8. Confinement of violators of ordinances.
36-30-9. Compensation of law enforcement officers.
36-30-10. Grant of right to obstruct public street prohibited.
36-30-11. Enclosure of lanes or alleys.
36-30-12. Closing streets adjacent to or through institutions of higher learning in municipal corporations having a population of 350,000 or more.
36-30-13. Special election to fill vacancies when all seats are vacant.

Cross references. — Evidentiary value of certified exemplifications of records and minutes of municipal corporations, § 24-7-21. Jurisdiction and authority of municipalities as to public roads, § 32-4-90 et seq. Procedure for abatement of nuisances in cities generally, § 41-2-5. Prohibition against requiring municipal or county officers or employees to reside within boundaries of municipality or county, § 45-2-5. Municipal Electric Authority of Georgia, § 46-3-110 et seq. Ad valorem taxation of property by municipalities, § 48-5-350 et seq.

Law reviews. — For annual survey of local government law, see 35 Mercer L. Rev. 233 (1983). For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

36-30-1. Meaning of terms "city," "town," "municipality," or "village."

Wherever the words "city," "town," "municipality," or "village" appear in the statutory laws of this state, such words shall be construed as synonymous, and the General Assembly so declares this to be its intention in the use of these words; such words shall be held to mean a municipal corporation as defined by statutory law and judicial interpretation. (Ga. L. 1964, p. 170, § 1.)

Law reviews. — For article, "Selected Oddities in Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975).

JUDICIAL DECISIONS

This section is not unconstitutional for being a legislative restriction of the judiciary. Holloway v. Mayor of Whitesburg, 225 Ga. 152, 166 S.E.2d 576 (1969) (see O.C.G.A. § 36-30-1).

This section does not operate to diminish the power of a city to impose a sentence after violations of penal ordinances of the city. City of Albany v. Key, 124 Ga. App. 16, 183 S.E.2d 20 (1971) (see O.C.G.A. § 36-30-1).

Cited in City of Jonesboro v. Clayton County Water Auth., 136 Ga. App. 768, 222 S.E.2d 76 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 1 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 1 et seq.

ALR. — Irrigation district as municipality within the tax laws, 17 ALR 81; 55 ALR 639.

36-30-2. Management and disposition of property.

The council or other governing body of a municipal corporation has discretion in the management and disposition of its property. Where such discretion is exercised in good faith, equity will not interfere therewith. (Civil Code 1895, § 746; Civil Code 1910, § 895; Code 1933, § 69-203.)

History of Code section. — This Code section is derived from the decision in Semmes v. Columbus, 19 Ga. 471 (1856) and Mayor of Athens v. Camak, 75 Ga. 429 (1885).

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963).

For note discussing governmental immunity from tort liability in Georgia, see 5 Ga. St. B.J. 494 (1969).

JUDICIAL DECISIONS

Property held by municipality for governmental or public uses cannot be sold without express legislative authority, but must be devoted to the use and purpose for which the property was intended. McPherson v. City of Dawson, 221 Ga. 861, 148 S.E.2d 298 (1966).

This section authorizes a city to sell any property owned in the city's purely proprietary capacity. McPherson v. City of Dawson, 221 Ga. 861, 148 S.E.2d 298 (1966) (see O.C.G.A. § 36-30-2).

Rule of judicial noninterference. — Court of equity will not interfere with the discretionary action of the governing officers of a city within the sphere of their legally delegated powers, unless such action is arbitrary, and amounts to an abuse of discretion. McMaster v. Mayor of Waynesboro, 122 Ga. 231, 50 S.E. 122 (1905); Mayor of Gainesville v. Dunlap, 147 Ga. 344, 94 S.E. 247 (1917); South Ga. Power Co. v. Baumann, 169 Ga. 649, 151 S.E. 513 (1929).

Courts cannot inquire into the motives of the mayor and general council of a municipality in enacting an ordinance, and cannot set the same aside if it is not

unreasonable, ultra vires, or unconstitutional. South Ga. Power Co. v. Baumann, 169 Ga. 649, 151 S.E. 513 (1929).

Municipality having a discretion under this section in the management and disposition of the municipality's property, in the absence of illegality, fraud, or clear abuse of discretion of the municipal authorities, equity will not interfere therewith, nor inquire into the propriety, economy, and general wisdom of the undertaking. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396 (1953).

Business affairs of a municipality are committed to the corporate authorities, and the courts will not interfere except in a clear case of mismanagement or fraud. J.C. Lewis Motor Co. v. Mayor of Savannah, 210 Ga. 591, 82 S.E.2d 132 (1954); Singer v. City of Cordele, 225 Ga. 323, 168 S.E.2d 138 (1969); Hamsley v. City of Unadilla, 265 Ga. 494, 458 S.E.2d 627 (1995).

Allegations that the city was employing extra police officer's and expending large sums of money to protect property during an emergency brought about by a strike were insufficient to show such abuse of city council's discretion as would entitle the petitioners, suing as "citizens and taxpayers," to the injunctive relief prayed for. Gulledge v. Augusta Coach Co., 210 Ga. 377, 80 S.E.2d 274 (1954), criticized, Head v. Browning, 215 Ga. 263, 109 S.E.2d 798 (1959).

Board of a municipality empowered to perform a particular act in the board's discretion will not be interfered with or controlled by the courts in the board's discretionary acts unless the board's discretion is manifestly abused, nor will the court inquire into the propriety, economy, or wisdom of the undertaking, or into the details of the manner adopted to carry the matter into execution. Macon Ambulance Serv., Inc. v. Snow Properties, Inc., 218 Ga. 262, 127 S.E.2d 598 (1962).

Governing body of city is not answerable for erroneous exercise of that body's discretion, although injurious consequences may result therefrom. Semmes v. Mayor of Columbus, 19 Ga. 471 (1856); Mayor of Athens v. Camak, 75 Ga. 429 (1885).

Municipal corporation may bind itself, and cannot abrogate any contract which the municipality has the right to make under the municipality's charter. Jonesboro Area Athletic Ass'n v. Dickson, 227 Ga. 513, 181 S.E.2d 852 (1971).

Cited in Jarrett v. City of Boston, 209 Ga. 530, 74 S.E.2d 549 (1953); Pittman v. City of Jesup, 232 Ga. 635, 208 S.E.2d 456 (1974); Silver v. City of Rossville, 253 Ga. 13, 315 S.E.2d 898 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 128 et seq., 160 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 148. 63 C.J.S., Municipal Corporations, §§ 1153, 1154, 1162.

ALR. — Validity of municipal ordinance as affected by motive of members of council which adopted it, 32 ALR 1517.

Power of municipal corporation to purchase or charter a boat or barge, 39 ALR 1332.

Power to detach land from municipal corporations, towns, or villages, 117 ALR 267.

Injunction against legislative body of state or municipality, 140 ALR 439.

Power of municipal corporation to lease or sublet property owned or leased by it, 47 ALR3d 19.

36-30-3. Ordinances of a council not to bind succeeding councils; exceptions.

(a) One council may not, by an ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government.

(b) The governing authorities of municipal corporations having a population of not less than 100,000 and not more than 135,000 according to the United States decennial census of 1970 or any future such census may on behalf of such municipal corporations enter into contracts with respect to the ownership, maintenance, construction, or reconstruction of street overpasses and underpasses of railroad properties which shall be binding upon such authorities and successors. Contracts executed by the governing authorities of such municipal corporations prior to December 31, 1977, with respect to the ownership, maintenance, construction, or reconstruction of street overpasses and underpasses of railroad properties are ratified and confirmed.

(c)(1) The governing authorities of municipal corporations having a population of not less than 350,000 according to the United States decennial census of 1980 or any future such census may, on behalf of such municipal corporations, authorize the mayor to enter into contracts with private or public entities not involving the incurring of indebtedness by such municipal corporations or security for indebtedness of such private and public entities for periods not exceeding 50 years and for a valuable consideration, which contracts shall be binding on such municipal corporations and on such authorities and successors, with respect to the leasing, subleasing, maintenance, or management of property for retail facilities, restaurants, or office or other commercial use, or for residential use, or with respect to property or facilities used for nonprofit museum purposes, which property or facilities are located in its downtown development area, as defined in paragraph (3) of Code Section 36-42-3; and to authorize the mayor to include in any such contracts for use of property which is located in a downtown development area and is in or contiguous to an urban redevelopment area established pursuant to Chapter 61 of this title or to enter into amendments to any such existing or future contracts for use of property which is located in such areas in order to include terms and conditions which provide for renewals or extensions of the term of such contracts for a period of time not to exceed an additional 50 years. The limitation involving the incurring of indebtedness by such municipal corporations or security for indebtedness of such private and public entities shall not apply to contracts for the use of property for nonprofit museum purposes, nor shall such limitation apply to contracts for the leasing, subleasing, maintenance, or management of property or facilities which, in addition to being located in a downtown development area, are also located in or contiguous to an urban redevelopment area established pursuant to Chapter 61 of this title, the "Urban Redevelopment Law."

(2) The governing authorities of any municipal corporation in this state having a population of 350,000 or more according to the United States decennial census of 1980 or any future such census may

authorize the mayor to execute contracts on behalf of such municipal corporation for periods not exceeding 50 years and for valuable consideration with public or private entities to support certificates of participation in a principal amount of not more than $100 million, which contracts shall be for the development, construction, leasing, subleasing, maintenance, or management of property or facilities used for criminal justice purposes and located within the downtown development area of such municipal corporation as defined in paragraph (3) of Code Section 36-42-3 and shall be binding on such municipal corporation and such authorities and their successors.

(d) The governing authority of any municipal corporation in this state may authorize the execution of one or more contracts which specify the rates, fees, or other charges which will be charged and collected by the municipal corporation for electric, natural gas, or water utility services to be provided by the municipal corporation to one or more of its utility customers. Nothing in this subsection, however, shall be construed to grant to any municipal governing authority the right or power to specify the rates, fees, or charges to be collected for electric, natural gas, or water utility services provided by a local authority, as defined in subsection (a) of Code Section 36-80-17, where the right or power to specify such rates, fees, or charges is otherwise vested by local constitutional amendment, general statute, or local law in the governing body of such local authority. Any such contract shall be subject to the following conditions and limitations:

(1) No such contract shall be for a term in excess of ten years;

(2) Any such contract which is for a term in excess of two years shall include commercially reasonable provisions under which the rates, fees, or other charges shall be adjusted with respect to inflationary or deflationary factors affecting the provision of the utility service in question; and

(3) Any such contract shall include commercially reasonable provisions relieving the municipal corporation from its obligations under the contract in the event that the municipal corporation's ability to comply with the contract is impaired by war, natural disaster, catastrophe, or any other emergency creating conditions under which the municipal corporation's compliance with the contract would become impossible or create a substantial financial burden upon the municipal corporation or its taxpayers. (Civil Code 1895, § 743; Civil Code 1910, § 892; Code 1933, § 69-202; Ga. L. 1979, p. 521, § 1; Ga. L. 1982, p. 2107, § 36; Ga. L. 1986, p. 841, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1987, p. 175, § 1; Ga. L. 1987, p. 275, § 1; Ga. L. 1989, p. 1287, § 1; Ga. L. 1990, p. 286, § 1; Ga. L. 1991, p. 989, § 1; Ga. L. 1998, p. 1113, § 2.)

History of Code section. — This Code section is derived from the decision in Williams v. City Council, 68 Ga. 816 (1882).

Cross references. — Constitutional provisions placing limitations on debt which may be incurred by a county, municipality, or political subdivision, Ga. Const. 1983, Art. IX, Sec. V, Para. I.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "United States" was substituted for "United State" in subsection (c).

Law reviews. — For article, "Local Government and Contracts that Bind," see 3 Ga. L. Rev. 546 (1969). For article, "Binding Contracts in Georgia Local Government Law: Recent Perspectives," see 11 Ga. St. B.J. 148 (1975). For article discussing the origin and construction of Georgia statute concerning the authority of a council to bind its successors, see 14 Ga. L. Rev. 239 (1980). For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For article, "Binding Contracts in Georgia Local Government Law: Configurations of Codification," see 24 Ga. L. Rev. 95 (1989). For article, "The Georgia Supreme Court and Local Government Law: Two Sheets to the Wind," see 16 Ga. St. U. L. Rev. 361 (1999). For article, "Local Government Litigation: Some Pivotal Principles," see 55 Mercer L. Rev. 1 (2003). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005). For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For note on 1990 amendment of this Code section, see 7 Ga. St. U. L. Rev. 324 (1990).

JUDICIAL DECISIONS

Analysis

General Consideration
Street Overpasses and Railroad Underpasses
Specific Contracts

General Consideration

Origin of section. — This statute is not of statutory origin, and is not peculiar to Georgia. The statute is a codification of a principle which is applicable generally to legislative or governmental bodies. Aven v. Steiner Cancer Hosp., 189 Ga. 126, 5 S.E.2d 356 (1939) (see O.C.G.A. § 36-30-3).

Legislative intent. — Framers of this section intended to preserve for municipal governments freedom from ordinances which bind and prevent free legislation in matters such as operating budgets. Brown v. City of E. Point, 152 Ga. App. 801, 264 S.E.2d 267 (1979), aff'd, 246 Ga. 144, 268 S.E.2d 912 (1980) (see O.C.G.A. § 36-30-3).

Standing of citizen-taxpayer. — Absent expenditures of public revenue or performance of a duty owed to the public, a citizen-taxpayer has no standing in equity to challenge a council's action which allegedly binds future councils unless the citizen has special damages not shared by the general public. Juhan v. City of Lawrenceville, 251 Ga. 369, 306 S.E.2d 251 (1983).

Power to contract for future. — All legislative bodies are limited in their legal capacity in such a manner as not to deprive succeeding bodies of the right to deal with matters involving the same questions as may arise from time to time in the future, and as the then present exigencies may require. But a municipal corporation may make a valid contract to continue for a reasonable time beyond the official term of the officers entering into the contract for the municipality. Horkan v. City of Moultrie, 136 Ga. 561, 71 S.E. 785 (1911).

No power to cede away governmental powers. — Powers are conferred upon municipal corporations for public purposes, and as their legislative powers cannot be delegated, so they cannot be bargained or bartered away. Such corporations may make authorized contracts, but they have no power, as a party, to make contracts or pass bylaws which

shall cede away, control, or embarrass their legislative or governmental powers, or which shall disable them from performing their public duties. Horkan v. City of Moultrie, 136 Ga. 561, 71 S.E. 785 (1911).

Effect of section. — This section prohibits, as ultra vires, the enactment of ordinances or the execution of contracts which are effective beyond the term of the commissioners then in office. Ledbetter Bros. v. Floyd County, 237 Ga. 22, 226 S.E.2d 730 (1976) (see O.C.G.A. § 36-30-3).

Contract which restricts governmental or legislative functions of a city council has been traditionally held to be a nullity, ultra vires, and void even though it may present a trap for the unwary in dealing with municipal corporations; the municipality would not be estopped from asserting the invalidity of such a contract at any time. Brown v. City of East Point, 246 Ga. 144, 268 S.E.2d 912 (1980).

Action void as ultra vires. — Settlement agreement entered into by a county and the county's board of commissioners was void as an ultra vires act because it purported to forever bind the hands of future boards of commissioners regarding land use and zoning decisions for certain property. Buckhorn Ventures, LLC v. Forsyth County, 262 Ga. App. 299, 585 S.E.2d 229 (2003).

Applicability to counties. — Principle stated in O.C.G.A. § 36-30-3 applies to counties as well as to municipalities. Madden v. Bellew, 260 Ga. 530, 397 S.E.2d 687 (1990).

When power to grant franchises stems from Ga. L. 1976, p. 188, § 1 (see O.C.G.A. § 36-34-2(7)), there was no violation of former Code 1933, § 69-202 (see O.C.G.A. § 36-30-3). City of Lithonia v. Georgia Pub. Serv. Comm'n, 238 Ga. 339, 232 S.E.2d 832 (1977).

Section applicable to governmental, not proprietary functions. — This section does not apply to a situation where a political subdivision is operating in a proprietary rather than a governmental capacity. Southern Airways Co. v. DeKalb County, 102 Ga. App. 850, 118 S.E.2d 234 (1960) (see O.C.G.A. § 36-30-3).

While long-term commitments which could be characterized as proprietary have been permitted, attempts at binding arrangements with respect to governmental functions have been prohibited. Brown v. City of E. Point, 152 Ga. App. 801, 264 S.E.2d 267 (1979), aff'd, 246 Ga. 144, 268 S.E.2d 912 (1980).

Rules of procedure passed by one legislative body are not binding upon subsequent legislative bodies operating within same jurisdiction; no legislative body can divest that body's successor of its legislative powers by passing ordinances or resolutions which deprive their successor of the power to exercise fully their legislative discretion, and each legislative body, when it meets, and unless restrained by the authority which created it, is without rules of procedure, and has inherent power to make its own rules without reference to the action of preceding bodies. South Ga. Power Co. v. Baumann, 169 Ga. 649, 151 S.E. 513 (1929).

Applicability to authorities. — This section does not prohibit authorities, as distinguished from municipalities, from entering long-term contracts: there is no basis for the assertion that it applies to authorities. City of Jonesboro v. Clayton County Water Auth., 136 Ga. App. 768, 222 S.E.2d 76 (1975) (see O.C.G.A. § 36-30-3).

If this section is too rigidly applied, there would be few contracts which municipalities could legally enter into, since contracts, by definition, must be binding, and many of the contracts, to be practical and effective, must extend beyond the existing councils' terms because of the nature of their subject matter. Jonesboro Area Athletic Ass'n v. Dickson, 227 Ga. 513, 181 S.E.2d 852 (1971).

One municipal council may not by ordinance bind itself or the council's successors so as to prevent free legislation in matters of municipal government. Aven v. Steiner Cancer Hosp., 189 Ga. 126, 5 S.E.2d 356 (1939); Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

What cannot be done by an ordinance cannot be done by a contract. Screws v. City of Atlanta, 189 Ga. 839, 8 S.E.2d 16 (1940).

Ratification of contracts by subsequent council. — Future council may be

General Consideration (Cont'd)

bound by the terms of a contract if that council either approves the terms of the contract or ratifies the contract. Brown v. City of E. Point, 246 Ga. 144, 268 S.E.2d 912 (1980).

Duration of contracts. — Municipal corporation may make a valid contract to continue for a reasonable time beyond the official term of the officers entering into the contract for the municipality. Jonesboro Area Athletic Ass'n v. Dickson, 227 Ga. 513, 181 S.E.2d 852 (1971).

O.C.G.A. § 36-30-3(a) does not prevent a contract from extending beyond the term of the commission in office at the time of the contract's execution. Unified Gov't v. North, 250 Ga. App. 432, 551 S.E.2d 798 (2001).

While a municipality is not estopped to deny the validity of a contract wholly beyond the municipality's powers, the municipality may be estopped by the exercise of contractual powers legally vested in the municipality, and even by the exercise of governmental powers, to prevent manifest injustice and wrongs to private persons, where the restraint placed upon a municipality to accomplish that purpose does not interfere with the exercise of governmental powers of the municipality. Brown v. City of E. Point, 246 Ga. 144, 268 S.E.2d 912 (1980).

Cited in DeJarnette v. Hospital Auth., 195 Ga. 189, 23 S.E.2d 716 (1942); Mayor of Waynesboro v. McDowell, 213 Ga. 407, 99 S.E.2d 92 (1957); Smith v. Hayes, 217 Ga. 94, 121 S.E.2d 113 (1961); Glendale Estates, Inc. v. Mayor of Americus, 222 Ga. 610, 151 S.E.2d 142 (1966); McElmurray v. Richmond County, 223 Ga. 47, 153 S.E.2d 427 (1967); Housing Auth. v. Mercer, 123 Ga. App. 38, 179 S.E.2d 275 (1970); Pittman v. City of Jesup, 232 Ga. 635, 208 S.E.2d 456 (1974); Frazer v. City of Albany, 245 Ga. 399, 265 S.E.2d 581 (1980); Wilson v. Southerland, 258 Ga. 479, 371 S.E.2d 382 (1988); CSX Transp., Inc. v. Garden City, 196 F. Supp. 2d 1288 (S.D. Ga. 2002); Marlowe v. Colquitt County, 278 Ga. App. 184, 628 S.E.2d 622 (2006); CSX Transp., Inc. v. City of Garden City, 418 F. Supp. 2d 1366 (S.D. Ga. 2006).

Street Overpasses and Railroad Underpasses

Subsection (b) inapplicable to easement involving grade crossing. — Subsection (b) of O.C.G.A. § 36-30-3, which speaks specifically of "the ownership, maintenance, construction, or reconstruction of street overpasses and underpasses of railroad properties," is inapplicable to an easement involving grade crossings. Chatham County Comm'rs v. Seaboard C.L.R.R., 169 Ga. App. 607, 314 S.E.2d 449 (1984).

Specific Contracts

Contracts made by virtue of express authority granted in the city charter are outside this prohibition. Brown v. City of E. Point, 246 Ga. 144, 268 S.E.2d 912 (1980).

Employment contracts. — Provisions of county's personnel handbook regarding merit salary increases for employees could not bind the board of commissioners to approve the funding of future increases. International Bhd. of Police Officers Local 471 v. Chatham County, 232 Ga. App. 507, 502 S.E.2d 341 (1998).

Judgment in favor of former employee was reversed because the contract was renewed automatically and the severance package required the city to pay the employee the employee's salary and benefits for an entire year after the year in which the contract was terminated; as such, the contract was ultra vires and void under O.C.G.A. § 36-30-3(a). City of McDonough v. Campbell, 289 Ga. 216, 710 S.E.2d 537 (2011).

Ordinance providing severance pay for retiring city employees fell into express authority exception to O.C.G.A. § 36-30-3 in view of charter provisions conferring broad authority upon the city to establish a pension system upon such terms and conditions as the mayor and council deemed proper. City of Athens v. McGahee, 178 Ga. App. 76, 341 S.E.2d 855 (1986).

O.C.G.A. § 36-30-3 does not apply to construction contracts, which typically extend beyond the term of the officer entering into the contract for the municipal-

ity. City of Atlanta v. Brinderson Corp., 799 F.2d 1541 (11th Cir. 1986).

Construction of county buildings. — Agreements authorized by the County Building Authority Act, in regard to the acquisition and construction of certain county buildings, were not in violation of O.C.G.A. § 36-30-3, for the necessary authority of the county and the building authority to enter into contracts for up to 50 years was contained in the intergovernmental contracts provision (Ga. Const., 1983, Art. IX, Sec. III, Para. I). Building Auth. v. State, 253 Ga. 242, 321 S.E.2d 97 (1984).

Construction of roads. — O.C.G.A. § 36-30-3(a) did not prevent a unified government's liability on a contract with a developer to build a road diverting traffic from a water treatment plant away from the developer's subdivision after the road was not completed on time. Unified Gov't v. North, 250 Ga. App. 432, 551 S.E.2d 798 (2001).

Contracts limiting governmental powers. — Restriction in this section against one council binding itself or a successor also applies to contracts which limit a municipality's legislative or governmental powers. City of Jonesboro v. Clayton County Water Auth., 136 Ga. App. 768, 222 S.E.2d 76 (1975) (see O.C.G.A. § 36-30-3).

Provisions of Ga. L. 1937, p. 761, § 1 et seq. (see O.C.G.A. § 36-82-60 et seq.), do not render meaningless the mandate of former Code 1933, § 69-202 (see O.C.G.A. § 36-30-3). The express statutory authority for a municipality to contract with the bond holders as to specified future utility rates does not extend to contracts with the wholesaler of electrical power. Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651 (1962).

Each case must stand on the case's own peculiar factual situation. Jonesboro Area Athletic Ass'n v. Dickson, 227 Ga. 513, 181 S.E.2d 852 (1971).

This section does not prohibit a contract that will be completed within the term of the commissioners, even though the depreciable life of the property contracted for extends beyond the term of the commissioners. Ledbetter Bros. v. Floyd County, 237 Ga. 22, 226 S.E.2d 730 (1976) (see O.C.G.A. § 36-30-3).

Option to purchase land. — Lease by city of parcel of land accompanied by ten-year option to purchase land at a fixed price did not bind council or the council's successors so as to prevent free legislation in matters of municipal government. Silver v. City of Rossville, 253 Ga. 13, 315 S.E.2d 898 (1984).

Lease of land for hospital. — Lease of land owned by the city for a rental or consideration to the city in the form of medical and surgical treatment to be furnished to the poor by the lessee corporation would have the effect of preventing free legislation in a matter of municipal government and for this reason would be illegal and void. Aven v. Steiner Cancer Hosp., 189 Ga. 126, 5 S.E.2d 356 (1939).

Lease of property to airport. — When a county through the county's proper authority leases property which the county owns for use as an airport, the county is engaging in a proprietary and not a governmental function. Southern Airways Co. v. DeKalb County, 102 Ga. App. 850, 118 S.E.2d 234 (1960).

Furnishing water to lessee. — When a municipality leases certain property for a term of 25 years, a provision of such contract obligating the city to supply the leased premises with water free of charge during the term of the lease is ultra vires and void. Screws v. City of Atlanta, 189 Ga. 839, 8 S.E.2d 16 (1940).

Furnishing water and sewage facilities to airport. — Provision in a contract requiring a county to furnish water and sewage facilities to airport leased to private party without charge during 15 years, to begin at an undetermined future date, is invalid. Southern Airways Co. v. DeKalb County, 102 Ga. App. 850, 118 S.E.2d 234 (1960).

Municipality's agreement to provide access to sewer system does not impair governmental function and therefore is not subject to subsection (a) of O.C.G.A. § 36-30-3, which prohibits a council from binding itself or others so as to prevent free legislation in matters of municipal government. City of Powder Springs v. WMM Properties, Inc., 253 Ga. 753, 325 S.E.2d 155 (1985).

Specific Contracts (Cont'd)

Franchise granted by a city council to a public service corporation, under the charter powers of the city, constitutes a binding contract, and as such is not violative of this section. City of Summerville v. Georgia Power Co., 205 Ga. 843, 55 S.E.2d 540 (1949) (see O.C.G.A. § 36-30-3).

Rezoning is legislative in nature and one county commission cannot deprive or restrict a succeeding commission in the exercise of the commission's legislative power by the device of entering into a contract or agreement purporting to limit the authority of the county commission to legislate in this regard. Barton v. Atkinson, 228 Ga. 733, 187 S.E.2d 835 (1972).

Use of bond funds. — County commission cannot limit the commission's successors in the exercise of legislative power by ordinance or by contract; however, this principle has no application to the legitimate use of bond funds for an authorized public purpose. Lindsey v. Guhl, 237 Ga. 567, 229 S.E.2d 354 (1976).

Holding title on easement to land. — There is no inhibition against the acquisition by a municipality of title to or of an easement in land to be held in perpetuity for the public use such as streets, alleys, sidewalks, parks, water and sewerage systems, cemeteries, and the like. The power was recognized as inherent at common law and is generally provided specifically or in the general welfare provisions of the municipality's charter, for without it a municipality could not effectively function. City of Douglas v. Cartrett, 109 Ga. App. 683, 137 S.E.2d 358 (1964).

Municipal corporation acts in proprietary rather than governmental capacity in operating an electric distribution system. — Restriction placed upon municipal corporations by this section relates only to its governmental functions. Therefore, there is generally no objection to a contract by a municipal corporation for a supply of electrical power which extends beyond the term of office of the officers making the contract. The only restriction is that it must be reasonable in length of time for which it is to extend. Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651 (1962) (see O.C.G.A. § 36-30-3).

Agreement to accept payment in lieu of ad valorem taxes void. — Any agreement reached by plaintiff city that it would accept a reasonable annual amount from defendant in lieu of ad valorem taxes was void as an ultra vires act because the effect of the agreement would be to bind successive city commissions indefinitely. Georgia Presbyterian Homes, Inc. v. City of Decatur, 165 Ga. App. 395, 299 S.E.2d 900, aff'd, 251 Ga. 290, 304 S.E.2d 908 (1983).

No agreement as to schedule of payments to city. — When a contract is fully executed by a city and the only remaining obligations are payments owed to the city by the other party to the contract, but there is no agreement as to the annual sum to be paid beyond a certain year, no contract exists; the fact that the other party expects to pay some amount to be agreed upon, and does pay a certain amount annually for several years, does not show an agreement by it to pay, or by the city to accept, that amount. City of Decatur v. Georgia Presbyterian Homes, Inc., 251 Ga. 290, 304 S.E.2d 908 (1983).

Power of a municipality to fix and regulate water rates is a legislative or governmental power and falls within the limitation placed upon councils of municipalities by this section. Screws v. City of Atlanta, 189 Ga. 839, 8 S.E.2d 16 (1940); City of Warm Springs v. Bulloch, 212 Ga. 149, 91 S.E.2d 13 (1956); Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651 (1962) (see O.C.G.A. § 36-30-3).

Contract for exemption from sewer assessments. — Under the provisions of this section, a contract made by a municipality with property owners, to exempt the owners from future sewer assessments, is ultra vires, even though upon faith of the agreement the property owners conveyed rights of way to the city and the city accepted and entered upon the contract. Accordingly, a subsequent council of the municipality is not prevented from levying and enforcing proper sewer assessments against such property owners. J.S.H. Co. v. City of Atlanta, 193 Ga. 1, 17 S.E.2d 55 (1941) (see O.C.G.A. § 36-30-3).

An agreement whereby the city would aid plaintiff in collecting a "tap-on" fee to sewer and water mains constructed by plaintiff and hooked to the city lines would attempt to bind governing authorities and would therefore be illegal. Simmons v. City of Clarkesville, 234 Ga. 530, 216 S.E.2d 826 (1975).

Easement for effluent line. — Collateral agreements in the grant of an easement to a municipality for the purpose of constructing and maintaining an effluent line which relate to the manner of the line's maintenance cannot be effective beyond the term of the mayor and council accepting the easement and making the agreements, and beyond that time are void. City of Douglas v. Cartrett, 109 Ga. App. 683, 137 S.E.2d 358 (1964).

Contract for placement of bus stop benches. — Pretermitting the applicability of O.C.G.A. § 36-30-3(a) to counties, the subsection would not invalidate a county's contract with a company for the placement of bus benches at transit system stops. Board of Comm'rs v. Chatham Advertisers, 258 Ga. 498, 371 S.E.2d 850 (1988).

Employee pay raises. — County employees could not establish a promissory estoppel claim that the county could not promise mandatory annual four percent pay raises. Johnson v. Fulton County, 235 Ga. App. 277, 509 S.E.2d 355 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Acts which a city cannot do by an ordinance cannot be done by a contract. 1965-66 Op. Att'y Gen. No. 65-42.

Contract restricting governmental powers. — While a contract can be entered into which extends beyond the terms of office of a mayor and council members, the fact must be noted that a municipal corporation has no power to make contracts restricting or limiting the municipality's legislative or governmental powers, and a contract which restricts the legislative and governmental powers of future councils is ultra vires and void. 1965-66 Op. Att'y Gen. No. 65-42.

Water supply contract. — Municipalities may enter into a valid and binding contract to provide a system of water supply mutual to all for a period not to exceed 50 years; further, municipalities may not bind themselves by any agreement respecting the sewage system or regulation of the rates of water or sewage, for a period longer than the life of the present council. 1952-53 Op. Att'y Gen. p. 126.

Fixing of water rates is a legislative and governmental power, and one council may not, by contract or ordinance, deprive succeeding councils of this legislative or governmental power; the prohibition extends to counties as well as municipalities. 1969 Op. Att'y Gen. No. 69-336.

Waste water treatment services contracts. — O.C.G.A. § 36-60-2, permitting municipalities to enter into multi-year contracts to provide industrial waste water treatment services, provides an explicit statutory exception to O.C.G.A. § 36-30-3 and allows contracts between municipalities and certain private entities for periods up to 50 years. The contract must enable the municipality to comply with the state and federal pollution standards and to receive public allotments. In addition, the contract must comply with the statutory requirement that the private corporation be charged a rate never less than the actual cost to the municipality. A contract meeting the above requirements would not violate the statutory prohibition against binding successors in office. 1992 Op. Att'y Gen. No. 92-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 137.

C.J.S. — 64 C.J.S., Municipal Corporations, § 1183.

ALR. — Power of board to appoint officer or make contract extending beyond its own term, 70 ALR 794; 149 ALR 336.

36-30-4. Eligibility of members of municipal councils or boards of aldermen for other municipal offices.

A councilman or alderman of a municipal corporation shall be ineligible to hold any other municipal office during the term of office for which the councilman or alderman was chosen unless he first resigns as councilman or alderman before entering such other office. This Code section shall apply to all elected officials of a municipal corporation. (Ga. L. 1889, p. 181, § 1; Ga. L. 1890-91, p. 226, § 1; Ga. L. 1895, p. 79, § 1; Civil Code 1895, § 739; Ga. L. 1899, p. 26, § 1; Civil Code 1910, § 886; Code 1933, § 69-201; Ga. L. 1957, p. 97, § 1.)

Cross references. — Vacancies created by elected officials qualifying for other office, Ga. Const. 1983, Art. II, Sec. II, Para. V.

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

Second sentence not restrictive. — Provision that O.C.G.A. § 36-30-4 shall apply to all elected officials of a municipality does not necessarily mean that the statute shall apply solely to such elected officials. Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 515 (1982).

Office of mayor of city or town having more than 2,000 inhabitants is municipal office. Crovatt v. Mason, 101 Ga. 246, 28 S.E. 891 (1897).

Councilman as member of city-county recreation commission. — Even assuming that councilman's job with a city-county recreation commission could properly be considered a "municipal office" within the ambit of O.C.G.A. § 36-30-4, and further assuming that the councilman's simultaneous service as councilman would result in an impermissible conflict of interest, it is clear that the result would not be to disqualify the councilman from holding the office of city councilman but rather to render the councilman ineligible to continue the councilman's employment with the commission while serving as a councilman. Hughley v. City of Thomaston, 180 Ga. App. 207, 348 S.E.2d 570 (1986).

City police officers are municipal officers. — Fact that city police officer has been held to be an officer of the state, does not negate the fact that a police officer is also a municipal officer. Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 515 (1982).

Fact that appellants may have been employees in their position as city police officers does not necessarily contra-indicate their status as office holders in that same position. Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 515 (1982).

City police officer cannot be alderman. — O.C.G.A. § 36-30-4 prohibits one from simultaneously holding office of alderman and police officer of city. Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 515 (1982).

Mayor of city is eligible to hold office of school commissioner. Akerman v. Ford, 116 Ga. 473, 42 S.E. 777 (1902).

Provision in city charter. — Under a city charter the mayor of a municipality could act not only as mayor, and receive the salary therefor, but could also be elected treasurer of the board of lights and waterworks, of which the mayor was ex officio a member, and receive the compensation fixed by the board for those services. There is no inhibition against one person holding both positions, and receiving both salaries, when authorized by the charter. Board of Lights & Waterworks v. Dobbs, 151 Ga. 53, 105 S.E. 611 (1921).

Commissioners of a city cannot select and appoint one of themselves as

city manager, the office of commissioner and city manager being incompatible. Board of Comm'rs v. Montgomery, 170 Ga. 361, 153 S.E. 34 (1930).

Alderman ineligible to be board of education member. — An alderman comes under the inhibition of this section, and during such term as alderman is incompetent to hold office as a member of the board of education. Matthews v. Morris, 169 Ga. 723, 151 S.E. 391 (1930) (see O.C.G.A. § 36-30-4).

Membership on the board of education is a municipal office within the meaning of this section. Matthews v. Morris, 169 Ga. 723, 151 S.E. 391 (1930) (see O.C.G.A. § 36-30-4).

Membership on board of water commissioners prohibited. — Because the city council of Columbus serves a supervisory and/or appellate function in relation to the board of water commissioners, a conflict of interest would exist if a council member were to serve concurrently on the board. Columbus, Ga. v. Board of Water Comm'rs, 261 Ga. 219, 403 S.E.2d 791 (1991).

Cited in Walters v. City of Dublin, 262 Ga. 265, 417 S.E.2d 144 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Scope of section's prohibition. — Prohibition of O.C.G.A. § 36-30-4 applies to all elected city officials. 1982 Op. Att'y Gen. No. U82-27.

This section renders a councilman ineligible to hold another municipal office unless the councilman has resigned the seat on the council at some time prior to entering the second office; the councilman is not required to resign prior to qualifying to run for the second office. 1975 Op. Att'y Gen. No. 75-18.

Council member of a municipality may run for the office of mayor or other municipal office but must resign such council seat prior to taking the second office. 1975 Op. Att'y Gen. No. 75-18.

Date of termination of office. — Officer whose present position will be finally terminated prior to the beginning date of any new office the officer may gain by election, is eligible to seek and hold such second office. 1963-65 Op. Att'y Gen. p. 565.

Council member of a city is ineligible to hold the office of clerk of the city while still holding the office of councilman. 1967 Op. Att'y Gen. No. 67-36.

Trustee of school board. — Member of City Council of Chickamauga cannot lawfully serve as trustee of city school board. 1982 Op. Att'y Gen. No. U82-27.

Recorder of court. — Councilman is prohibited from serving as recorder of the mayor's court. 1983 Op. Att'y Gen. No. U83-61.

Building inspector. — City commissioner cannot simultaneously hold office of city building inspector. 1962 Op. Att'y Gen. p. 333.

County commissioner. — Member of State Agricultural Commodities Commission may simultaneously hold the office of county commissioner. 1976 Op. Att'y Gen. No. U76-30.

Volunteer firefighter. — Dual service as a volunteer firefighter and member of a city council or county commission does not violate the provisions of O.C.G.A. § 36-30-4 or O.C.G.A. § 45-2-2; however, cities and counties must determine for themselves, based on the circumstances, whether a common-law conflict of interest exists. 1998 Op. Att'y Gen. No. U98-8.

Position with political committee. — An officer, member, or employee of a political committee is not a "public officer." 1966 Op. Att'y Gen. No. 66-181.

Holding party office. — Since state officials are not prevented from holding city or county offices, and since the positions involved are not ones for which political activity is banned by the rules and regulations of the merit system, a member of the board of commissioners is eligible to hold office on the Democratic executive committee at either the county or state level. 1966 Op. Att'y Gen. No. 66-181.

City commissioner may not sit on city zoning board. — Member of a city commission may not so serve and at the same time serve on a city planning and zoning board. 1971 Op. Att'y Gen. No. U71-107.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 219. 63C Am. Jur. 2d, Public Officers and Employees, §§ 57, 62.

C.J.S. — 62 C.J.S., Municipal Corporations, § 273 et seq.

ALR. — Time as of which eligibility or ineligibility to office is to be determined, 143 ALR 1026.

36-30-5. Inclusion of residency in annexed territory in computing period of residence necessary to qualify for office.

Whenever the charter of any incorporated municipality provides for a prior period of residency in the municipality as a qualification for the election or appointment of any person to any office or position in the municipal government, residence in territory which is afterwards annexed to the municipality shall be deemed residence within the municipality for the purpose of computing the period of residence to make one eligible to hold such office or position. (Ga. L. 1963, p. 426, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 212.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 419, 423 et seq.

36-30-6. Voting upon questions by interested councilmembers.

It is improper and illegal for a member of a municipal council to vote upon any question brought before the council in which he is personally interested. (Civil Code 1895, § 751; Civil Code 1910, § 900; Code 1933, § 69-204.)

History of Code section. — This Code section is derived from the decision in Daly v. Georgia S. & F.R.R., 80 Ga. 793, 7 S.E. 146 (1888).

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963). For article surveying important general legal principles of municipal and county government purchasing and contracting in Georgia, see 16 Mercer L. Rev. 371 (1965). For article discussing the impropriety of municipal employees representing their own self-interests in public matters, specifically relating to municipal purchasing, see 5 Ga. St. B.J. 309 (1969). For article discussing the effect of the general criminal statute on self-interest and municipal purchasing (§ 16-10-6) on the general statute on votes by municipal councilmen in matters of personal interest (this section) and on local statutory law, see 7 Ga. St. B.J. 431 (1971).

JUDICIAL DECISIONS

"Personal" interest is construed as a "financial" interest. Story v. City of Macon, 205 Ga. 590, 54 S.E.2d 396 (1949).

Contract void when council member stockholder in benefited corporation. — Contract entered into between a

private corporation and a city, under which the corporation is to perform certain work for which payment is to be made out of the city treasury, is void if at the time of the contract's execution one of the members of the city council was also a stockholder in such private corporation and such a contract does not become valid and legal when, subsequently, the interested member of the council sells the stock which the member owned at the time of the execution of the contract. Hardy v. Mayor of Gainesville, 121 Ga. 327, 48 S.E. 921 (1904).

Contract between a city and a construction company, in which a member of a council is a large stockholder, is null and void, although such member of a council did not vote for the ordinance authorizing such contract, and did not use the member's influence in procuring other members of council to approve and authorize the making of such contract, and although such contract is fair and free from fraud. Montgomery v. City of Atlanta, 162 Ga. 534, 134 S.E. 152 (1926).

Contract cannot be ratified by resignation of member. — When such an illegal contract has been made, the contract cannot subsequently be ratified by the resignation of the interested councilman and the confirmation of the contract by the council. Montgomery v. City of Atlanta, 162 Ga. 534, 134 S.E. 152 (1926).

Appointment of depository of which mayor and councilman are officers. — An ordinance naming a certain bank as the city depository and requiring the treasurer of the city to place all the municipal funds coming into the treasurer's hands therein is not necessarily void because the mayor of the city and one of the councilmen voting to adopt the ordinance were respectively officer and director of the bank named as depository. Smith v. City of Winder, 22 Ga. App. 278, 96 S.E. 14 (1918).

Ownership of land subject of public improvement. — Ownership by a member of a municipal council of land which will be affected by a public improvement does not disqualify the member from voting on such improvement. Story v. City of Macon, 205 Ga. 590, 54 S.E.2d 396 (1949).

Councilman employed as attorney by contractor. — Abutting owners cannot complain after completion of a municipal contract because of illegal participation in the execution of a municipal contract by a councilman who had been employed as an attorney by the contractor. Cochran v. City of Thomasville, 167 Ga. 579, 146 S.E. 462 (1928).

Employment by school subject of rezoning. — Fact that a councilman is employed by a school which would benefit from a rezoning which is being voted on is not a sufficient "personal interest" to fall under this section. Crawford v. Brewster, 225 Ga. 404, 169 S.E.2d 317 (1969), overruled on other grounds, 244 Ga. 765, 262 S.E.2d 53 (1975) (see O.C.G.A. § 36-30-6).

Cited in Olley Valley Estates, Inc. v. Fussell, 232 Ga. 779, 208 S.E.2d 801 (1974).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 130.

C.J.S. — 62 C.J.S., Municipal Corporations, § 298.

ALR. — Validity of municipal ordinance as affected by motive of members of council which adopted it, 32 ALR 1517.

Member of governmental board voting on measure involving his personal interest, 133 ALR 1257.

36-30-7. Authorization and procedure for surrender of corporate charter.

A municipal corporation in this state is authorized to surrender its corporate charter when such municipal corporation has not functioned under the corporate charter for a period of ten years, by petitioning the superior court of the county in which the municipal corporation lies,

such petition being made by a majority of the registered voters of the nonfunctioning municipal corporation. Thereupon, the judge of the superior court may receive the surrendered corporate charter and by order of the court declare the municipal corporation to be dissolved. Any order of any superior court judge dissolving any municipal corporation within this state will be furnished in duplicate to the Secretary of State and shall serve as notice upon the Secretary of State that the municipal corporation has, by order of the court, been dissolved as a municipal corporation. (Ga. L. 1947, p. 1545, § 1.)

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963). For article, "Selected Oddities in Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1872, p. 18, are included in the annotations for this Code section.

Delegation of legislative power to courts. — Basic principle embodied in the separation of powers doctrine is that the legislature cannot delegate legislative power to the courts. This does not mean, however, that the legislature is forbidden from conferring power on the courts to ascertain whether the statutory requirements for dissolution of a municipal charter have been satisfied in particular cases. Harrell v. Courson, 234 Ga. 350, 216 S.E.2d 105 (1975).

No delegation of legislative authority to voters. — Under the terms of this section, there is no delegation of legislative authority to a majority of the voters of municipalities. Harrell v. Courson, 234 Ga. 350, 216 S.E.2d 105 (1975) (see O.C.G.A. § 36-30-7).

Cessation of official duties. — Fact that mayor, recorder, and alderman voluntarily ceased to perform their official duties did not operate to terminate corporate existence. Such officers held office until their successors were elected and qualified, though not functioning. Sell v. Turner, 138 Ga. 106, 74 S.E. 783 (1912) (decided under Ga. L. 1872, p. 18).

Cited in Paige v. Gray, 437 F. Supp. 137 (M.D. Ga. 1977); City of Mt. View v. Clayton County, 242 Ga. 163, 249 S.E.2d 541 (1978).

OPINIONS OF THE ATTORNEY GENERAL

This section provides exclusive method of dissolution. 1963-65 Op. Att'y Gen. p. 519 (see O.C.G.A. § 36-30-7)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 83.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 131, 137.

36-30-7.1. Inactive municipalities.

(a) On and after July 1, 1995, any municipal corporation in this state shall be deemed an inactive municipality and its charter shall be repealed by operation of law if the municipal corporation fails to meet any of the minimum standards provided in subsection (b) of this Code section for determining an active municipality.

(b) An active municipality is any incorporated municipality in this state the governing body of which meets each of the following minimum standards:

(1) Provides at least three of the following services, either directly or by contract:

(A) Law enforcement;

(B) Fire protection (which may be furnished by a volunteer fire force) and fire safety;

(C) Road and street construction or maintenance;

(D) Solid waste management;

(E) Water supply or distribution or both;

(F) Waste-water treatment;

(G) Storm-water collection and disposal;

(H) Electric or gas utility services;

(I) Enforcement of building, housing, plumbing, and electrical codes and other similar codes;

(J) Planning and zoning; and

(K) Recreational facilities;

(2) Holds at least six regular, monthly or bimonthly, officially recorded public meetings within the 12 months next preceding the execution of the certificate required by subsection (c) of this Code section; and

(3) Qualifies for and holds a regular municipal election as provided by law, other than a municipality which has a governing authority comprised of commissioners or other members who are appointed by a judge of the superior court.

(c) Not later than July 1, 1994, each municipal corporation in this state shall file with the Department of Community Affairs either:

(1) A certification from the governing authority that the municipal corporation meets the minimum standards for determining an active municipality enumerated in subsection (b) of this Code section; or

(2) A certification from the governing authority that the municipal corporation does not meet the minimum standards for determining an active municipality enumerated in subsection (b) of this Code section, including a statement that the governing authority recognizes that its legal existence will under the provisions of this Code section be terminated as of July 1, 1995.

(d) After October 15, 1994, the Department of Community Affairs shall transmit to the governing authority of each municipal corporation in the state either:

(1) A statement confirming that the Department of Community Affairs has received from the municipal corporation the filing required by subsection (c) of this Code section, including a statement of which type of filing was received from that municipal corporation; or

(2) A statement that the Department of Community Affairs has not received from the municipal corporation the filing required by subsection (c) of this Code section, including a statement that the municipal corporation's legal existence will be terminated as of July 1, 1995, unless such filing is received by December 31, 1994.

(e) A municipal corporation which does not timely make the filing required by subsection (c) of this Code section shall have a grace period until December 31, 1994, to make such filing. However, if such filing is not made by December 31, 1994, the legal status of the municipal corporation shall be the same as that of a municipal corporation which does not meet the minimum standards for determining an active municipality enumerated in subsection (b) of this Code section; and such municipal corporation shall cease to have legal existence as of July 1, 1995.

(f) As quickly as practicable after December 31, 1994, the Department of Community Affairs shall compile a listing of all municipal corporations in this state indicating those whose legal existence will be terminated as of July 1, 1995, and those whose legal existence will not be so terminated. A certified copy of such listing shall be provided to the Secretary of State and shall be conclusive evidence, acceptable in any court and recordable in any public records, of the termination or continuation of existence of a municipal corporation. The Secretary of State shall transmit such a certified copy of the listing to the legislative counsel for publication in the Georgia Laws for the year 1995, and all courts of this state may take judicial notice of the listing so published.

(g) Upon the termination of existence of a municipal corporation as provided for in this Code section, the existence of any local authority created by or for such municipal corporation shall likewise terminate on the same date. Upon the termination of any municipal corporation or local authority under this Code section, all assets, property, and legal

rights and obligations of the municipal corporation or local authority shall devolve by operation of law upon the governing authority of the county in which the legal situs of the municipal corporation or local authority was located; provided, however, that this devolution of rights and obligations shall in no manner obligate the county to provide continued employment for any employee of the abolished municipal corporation or local authority. In the case of legal indebtedness of a municipal corporation or local authority devolving upon a county under this Code section, the county shall be authorized but not required to levy a special district tax, fee, or assessment within the formerly incorporated territory (or a portion thereof corresponding to any special district for which the indebtedness was incurred) for the purpose of retiring all or a portion of such indebtedness. Assets devolved to the county governing authority pursuant to this Code section which are deemed to be excess by the county shall be used to retire any indebtedness of the terminated municipal corporation or local authority. Property devolved to the county governing authority pursuant to this Code section which is deemed to be unnecessary by the county shall be sold and the proceeds from such sale used to retire any indebtedness of the terminated municipal corporation or local authority.

(h)(1) Upon the termination of existence of a municipal corporation as provided in this Code section, the geographic area that was contained in the boundaries of the former municipal corporation may continue to be identified under the same name and style as the former municipal corporation, and for such purpose signs and other appropriate insignia may be erected for such identification.

(2) The Department of Community Affairs shall establish a designation of "historic township" for communities created on or before 1900, provide for the establishment of unincorporated town councils, provide a procedure for converting such municipalities to townships, and for registration of such.

(i) At the session of the General Assembly held in the year 1996 only, a new charter may be granted to a municipal corporation which ceased to exist under the provisions of this Code section solely because of a failure to make the required filing with the Department of Community Affairs (not including any case where the municipal corporation failed to meet the minimum standards of an active municipality enumerated in subsection (b) of this Code section), without regard to the minimum standards for incorporation set out in Chapter 31 of this title. In such a case the local law granting the new charter shall have attached thereto, in lieu of the certificate otherwise required by Code Section 36-31-5, a certificate by the author of the bill stating that the requirements of this subsection are met by the municipal corporation being reincorporated. In any such case assets and property and rights and

obligations which devolved upon the county shall be retransferred from the county back to the municipal corporation.

(j) In any case in which the legal dissolution of a municipal corporation has not been certified under the provisions of subsection (f) of this Code section but the municipal corporation does not in fact meet the minimum standards for determining an active municipality enumerated in subsection (b) of this Code section, any citizen of the municipal corporation or the county in which the legal situs of the municipal corporation is located may bring at any time on or after July 1, 1995, a declaratory judgment action for a declaration of the dissolution of the municipal corporation. Any such action shall be brought in the superior court of the county wherein the legal situs of the municipal corporation is located. If a judgment is entered declaring the dissolution of the municipal corporation, the court shall file a certified copy of the judgment with the Secretary of State and the legislative counsel. A copy of such judgment shall be published in the next publication of the annual session laws with the same status and effect provided for in subsection (f) of this Code section; and a certified copy of the judgment from the court or the Secretary of State shall have the same status and effect as described in subsection (f) of this Code section. (Code 1981, § 36-30-7.1, enacted by Ga. L. 1993, p. 1579, § 1; Ga. L. 1996, p. 6, § 36.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "Recreational facilities" was substituted for "Recreational Facilities" in subparagraph (b)(1)(K), the paragraph (1) and (2) designations were added in subsection (h), and a comma was inserted following "to townships" in paragraph (h)(2).

Law reviews. — For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

For note on 1993 enactment of this Code section, see 10 Ga. St. U. L. Rev. 160 (1993).

JUDICIAL DECISIONS

Standing to bring action to dissolve city. — Subsection (j) of O.C.G.A. § 36-30-7.1, authorizing "any citizen" to bring an action for dissolution of a city, does not apply only to those municipalities which the Georgia Department of Community Affairs omitted from the list of inactive and active municipalities compiled pursuant to subsection (f) of O.C.G.A. § 36-30-7.1. City of Lithia Springs v. Turley, 241 Ga. App. 472, 526 S.E.2d 364 (1999).

Unified government meets the statutory criteria of an "active municipality." Athens-Clarke County v. Walton Elec. Membership Corp., 265 Ga. 229, 454 S.E.2d 510 (1995).

City meets requirements of an active municipality. — City's contract with county under which the county provided law enforcement, street construction and maintenance, solid waste collection, and recreational services in consideration of the county's receipt of sales taxes was valid and showed that the city met the requirements of an active municipality. Sherrer v. City of Pulaski, 228 Ga. App. 78, 491 S.E.2d 129 (1997).

Order dissolving a city was vacated since it was determined that the city pro-

vided road or street construction or maintenance services and water supply services and since there were issues of fact as to whether the city provided fire protection services, enforcement of the city's building code, or planning and zoning services. City of Lithia Springs v. Turley, 241 Ga. App. 472, 526 S.E.2d 364 (1999).

36-30-8. Confinement of violators of ordinances.

The right and power to organize work gangs or other means of confinement and to confine at labor therein, for a term not exceeding 30 days, persons convicted of violating the ordinances of municipal corporations is conferred on the municipal corporations or their respective authorities. In addition to other punishment allowed by law, municipal corporations, by and through their municipal courts, shall have the right and power to punish persons convicted of violating the ordinances of such municipal corporations by confinement or confinement at labor for a period of time not to exceed 30 days. (Ga. L. 1880-81, p. 179, § 1; Code 1933, § 69-205.)

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

One purpose of this section is the broadening of powers of municipalities by permitting the imposition of an alternative sentence, which had previously been held to be taboo because it was coercive in nature. City of Albany v. Key, 124 Ga. App. 16, 183 S.E.2d 20 (1971) (see O.C.G.A. § 36-30-8).

This section is permissive, and not mandatory. City of Albany v. Key, 124 Ga. App. 16, 183 S.E.2d 20 (1971) (see O.C.G.A. § 36-30-8).

RESEARCH REFERENCES

Am. Jur. 2d. — 21A Am. Jur. 2d, Criminal Law, §§ 888, 889. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 361.

C.J.S. — 72 C.J.S., Prisons and Rights of Prisoners, §§ 1, 4.

36-30-9. Compensation of law enforcement officers.

It shall be unlawful for any municipal corporation to provide commissions or percentages of any fines and forfeitures derived from any arrests made by law enforcement officers as compensation or any part thereof. The sole basis of compensating such employees shall be by a fixed salary, to be provided by the governing authority of such municipal corporation. (Ga. L. 1963, p. 479, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70 Am. Jur. 2d, Sheriffs, Police, and Constables, §§ 40, 41.

C.J.S. — 63 C.J.S., Municipal Corporations, § 634 et seq.

36-30-10. Grant of right to obstruct public street prohibited.

Without express legislative authority, a municipal corporation may not grant to any person the right to erect or maintain a structure or obstruction in a public street. (Civil Code 1895, § 745; Civil Code 1910, § 894; Code 1933, § 69-304.)

History of Code section. — This Code section is derived from the decision in Laing v. Mayor of Americus, 86 Ga. 756, 13 S.E. 107 (1891).

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

Analysis

General Consideration
Specific Obstructions

General Consideration

General application of this section has been to deny a city's right to permit obstructions that would constitute a nuisance and impede travel. City Council v. Shields, 108 Ga. App. 790, 134 S.E.2d 481 (1963) (see O.C.G.A. § 36-30-10).

Delegability of power to abolish, vacate or close street. — Legislature may delegate to a municipal corporation the power to abolish, vacate, or close a street in a municipality. When a street is abolished or closed by a municipality by virtue of such delegated power, the interest of the public therein ceases, and the owners of the fee, who are presumptively the abutting landowners, become entitled to use the property without regard to the former servitude imposed upon the land. Harbuck v. Richland Box Co., 207 Ga. 537, 63 S.E.2d 333 (1951).

Streets are primarily intended for the use of travelers; and a municipal corporation has no power, in the absence of express legislative authority, to allow a street to be used for any other purpose. City Council v. Reynolds, 122 Ga. 754, 50 S.E. 998 (1905).

Obstruction defined. — Any permanent structure in a road which materially interferes with travel is a nuisance per se, and any obstruction permanent in nature or continuously maintained which interferes with the free use of the road by the public is a public nuisance, and it is immaterial that space may be left on either side of the obstruction for the passage of the public. The public has the right to the unobstructed use of the whole road as the road was acquired by the county or city. Harbuck v. Richland Box Co., 204 Ga. 352, 49 S.E.2d 883 (1948).

Use of streets not absolute. — Use of streets and highways is not absolute and unrestricted, but is subject to reasonable regulation. Schlesinger v. City of Atlanta, 161 Ga. 148, 129 S.E. 861 (1925).

Limitations on right of public use. — Right of the public to the free and unobstructed use of a street or public way is subject to reasonable and necessary limitations. The right to temporarily obstruct the street springs from the necessities of the case, and such right is necessarily limited by the necessity existing. Those who exercise the right must do so in such manner as will create the least possible inconvenience to others, and the impediment must be removed within a reasonable time. Harbuck v. Richland Box Co., 204 Ga. 352, 49 S.E.2d 883 (1948).

Section not basis for municipal liability. — In the planning and the construction of a safety zone on a city street, the city was engaged in a governmental function and could not be held liable for any error in judgment in such planning. Beall v. City of Atlanta, 72 Ga. App. 760, 34 S.E.2d 918 (1945).

This section is not primarily a safety

measure, and is not a basis for liability for injury caused indirectly by a condition in or adjacent to the traveled portion of the street. City Council v. Shields, 108 Ga. App. 790, 134 S.E.2d 481 (1963) (see O.C.G.A. § 36-30-10).

Cited in City of Moultrie v. Colquitt County Rural Elec. Co., 211 Ga. 842, 89 S.E.2d 657 (1955); Southern Bell Tel. & Tel. Co. v. Martin, 229 Ga. 881, 194 S.E.2d 910 (1972); Georgia Power Co. v. Zimmerman, 133 Ga. App. 786, 213 S.E.2d 12 (1975).

Specific Obstructions

Permanent structures. — Municipal corporation has no power, in the absence of express legislative authority, to authorize the erection of permanent structures in a public street, which interfere with the free use of such street by the public. Savannah & W.R.R. v. Woodruff, 86 Ga. 94, 13 S.E. 156 (1890); Laing v. Mayor of Americus, 86 Ga. 756, 13 S.E. 107 (1891); City Council v. Jackson, 20 Ga. App. 710, 93 S.E. 304 (1917); Mayor of Savannah v. Markowitz, 155 Ga. 870, 118 S.E. 558 (1923).

Permissibility of noninterfering structures. — Permanent structures which do not interfere with travel and which are erected for public purposes, such as telegraph and telephone poles, and the like, are permissible. But no permanent structure of any character which interferes in the slightest degree with the right of travel upon the street is ever permissible if such structure is erected for purely private purposes. City Council v. Reynolds, 122 Ga. 754, 50 S.E. 998 (1905).

Temporary obstructions. — Temporary obstructions in a street are permissible under certain circumstances, even if the obstruction is for the benefit or convenience of an individual. The general rule is that if the purpose for which the obstruction is created is lawful, and the obstruction exists only for such a time as is reasonably necessary to accomplish the purpose which brings about the necessity for the obstruction, such an obstruction would not be a public nuisance. City Council v. Reynolds, 122 Ga. 754, 50 S.E. 998 (1905).

Any temporary obstruction in a public street is presumptively a public nuisance, and it is incumbent upon the persons responsible for the presence of such obstruction to show that the destruction was placed in the street in furtherance of a lawful and legitimate purpose, and has not been continued any longer than was reasonably necessary for the accomplishment of this purpose. City Council v. Reynolds, 122 Ga. 754, 50 S.E. 998 (1905).

Expenses incurred in erecting obstruction no defense. — It is no reason for not removing the obstructions from a street that the plaintiff has incurred expense in erecting and maintaining the obstruction, and no lapse of time will render the license irrevocable. Laing v. Mayor of Americus, 86 Ga. 756, 13 S.E. 107 (1891); Mayor of Savannah v. Markowitz, 155 Ga. 870, 118 S.E. 558 (1923).

Obstructions "for purely private gain" are not permissible. — Streets are primarily intended for the use of travelers, and any permanent structure in a street which materially interferes with travel thereon is a public nuisance. Permanent structures which do not interfere with travel, and which are erected for public purposes, such as telegraph and telephone poles, and the like, are permissible. City Council v. Reynolds, 122 Ga. 754, 50 S.E. 998 (1905); Butler v. City of Atlanta, 47 Ga. App. 341, 170 S.E. 539 (1933).

Fair in public street a nuisance. City Council v. Reynolds, 122 Ga. 754, 50 S.E. 998 (1905).

Constitutionality of restriction of buses. — Use of streets by common carriers for the purpose of gain is extraordinary and may be conditioned or prohibited as the legislature or municipality deems proper. Hence, if the state or city determines that the use of streets by buses should be restricted or prohibited there is nothing in the Constitution of the United States or this state which prohibits such action. Schlesinger v. City of Atlanta, 161 Ga. 148, 129 S.E. 861 (1925).

Use by streetcars. — Legislature has expressly given to cities the power to permit the use of streets for the operation of

Specific Obstructions (Cont'd)

streetcars, and has conferred upon the city commissioners the authority to determine the location of trolley poles by provisions of former Code 1933, § 94-301 (see O.C.G.A. § 46-8-100(5)). Townsend v. Georgia Power Co., 44 Ga. App. 132, 160 S.E. 712 (1931).

Medians. — When a median does not interfere with the plaintiffs' ingress and egress to plaintiff's properties but requires mere circuity of travel only, abutting landowners have no cause of action as this section does not apply. Hadwin v. Mayor of Savannah, 221 Ga. 148, 143 S.E.2d 734 (1965) (see O.C.G.A. 36-30-10).

Construction of "safety islands". — Municipality and street railroad companies operating within its limits have the power, without being guilty of maintaining a nuisance or committing thereby an act of negligence per se, to authorize the construction and maintenance of, and to construct and maintain under such municipal authority, what are termed "safety islands" or "safety zones" in streets at the side of a streetcar line, for the use and safety of the public from automobile and other traffic when entering and departing from streetcars. Butler v. City of Atlanta, 47 Ga. App. 341, 170 S.E. 539 (1933).

Municipal ordinance which was an attempt to vacate 20 feet of a public street for the benefit of a private corporation is in excess of statutory authority. Harbuck v. Richland Box Co., 204 Ga. 352, 49 S.E.2d 883 (1948).

Constructing bridges. — City may in the proper exercise of the city's discretion, and as a movement in the direction of public improvement, build a bridge in one of the city's streets, and, incidentally, close the street during the reasonable duration of the work. In like manner, the municipal authorities may authorize a railroad company to build the bridge for the benefit of the city, giving the company power to close the street for a reasonable time while the work is being done. Adair v. City of Atlanta, 124 Ga. 288, 52 S.E. 739 (1905).

City's right to obstruct street. — When it is not prohibited by law, a city may legally erect and maintain an obstruction in one of the city's streets, provided the obstruction is not dangerous, and does not constitute an unreasonable interference with the lawful use of the street. South Ga. Power Co. v. Smith, 42 Ga. App. 100, 155 S.E. 80 (1930).

RESEARCH REFERENCES

C.J.S. — 64 C.J.S., Municipal Corporations, §§ 1884, 1885.

ALR. — Power of municipality to permit permanent loading platforms in street, 11 ALR 442.

Power to close or obstruct street temporarily to permit its use for purposes of sport or entertainment, 34 ALR 270.

Validity, construction, and application of ordinances prohibiting or regulating "curb service", 111 ALR 131.

Municipality's power to permit private owner to construct building or structure overhanging or crossing the air space above public street or sidewalk, 76 ALR2d 896.

Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose, 14 ALR3d 896.

36-30-11. Enclosure of lanes or alleys.

The municipal authorities of any municipal corporation are authorized to permit the enclosure of any lane, alley, or portion thereof in such municipal corporation when the owners of the lots abutting on such lane or alley and the owners of any other lots to the enjoyment of which access through such lane or alley is necessary consent thereto.

Such municipal authorities shall have the right at any time to reopen such lane or alley. (Ga. L. 1878-79, p. 174, § 1; Code 1933, § 69-207.)

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 246 et seq.
C.J.S. — 64 C.J.S., Municipal Corporations, § 1805 et seq.

ALR. — Right of public to use alley, 58 ALR 239.

36-30-12. Closing streets adjacent to or through institutions of higher learning in municipal corporations having a population of 350,000 or more.

In all municipal corporations of this state having a population of 350,000 or more according to the United States decennial census of 1980 or any future such census, the municipal authorities of such municipal corporations are authorized to close any municipal streets adjacent to or through institutions of higher learning during any hours in which the municipal authorities determine that it is in the best interest of the public safety and welfare to do so. For the purposes of this Code section, "public safety and welfare" shall be defined to include not only considerations of the flow of traffic, but may also include a determination that to close said streets during such hours will enhance police protection on said streets. (Code 1981, § 36-30-12, enacted by Ga. L. 1982, p. 1177, § 1; Ga. L. 1983, p. 3, § 27; Ga. L. 1991, p. 989, § 2.)

36-30-13. Special election to fill vacancies when all seats are vacant.

Except as provided in subsection (g) of Code Section 21-4-13, in the event that all seats on the governing authority of a municipality are vacant, the election superintendent of the county in which the municipality is located shall have the authority to call for a special election to fill the vacant offices and to conduct, or to appoint a superintendent of elections for the municipality for the purpose of conducting, the special election. The board of registrars for the county shall prepare the electors list for the special election. (Code 1981, § 36-30-13, enacted by Ga. L. 1987, p. 178, § 1; Ga. L. 1990, p. 8, § 36.)

CHAPTER 31

INCORPORATION OF MUNICIPAL CORPORATIONS

Sec.
36-31-1. Legislative intent.
36-31-2. Two-year inapplicability of provisions regarding inactive municipalities.
36-31-3. Minimum population standards for proposed municipal corporation.
36-31-4. Use and subdivision of areas proposed to be incorporated.
36-31-5. Certificate of existence of minimum standards; manner of determination; disposition and evidentiary effect of certificate.
36-31-6. Responsibility of the Attorney General for preclearances.
36-31-7. Power to license and regulate alcoholic beverages.
36-31-8. Transition periods for governmental functions; appointment by the Governor of interim representatives.
36-31-9. Initial terms of office.
36-31-10. Appropriation of funds for grants or loans.
36-31-11. Removal of new municipal corporations from county special districts for provision of local government services.
36-31-11.1. Municipality control over parks and fire stations; obligation of county.
36-31-12. Legislative findings; special districts divided into noncontiguous areas; information required in audits; informational summary.

36-31-1. Legislative intent.

It is declared to be the intention of the General Assembly to prescribe certain minimum standards which must exist as a condition precedent to the original incorporation of a municipal corporation of this state. (Ga. L. 1963, p. 251, § 1.)

Law reviews. — For article surveying history of grant of municipal charters in Georgia, see 11 Ga. B.J. 133 (1948).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 13.

C.J.S. — 62 C.J.S., Municipal Corporations, § 11.

36-31-2. Two-year inapplicability of provisions regarding inactive municipalities.

When a municipal corporation is created by local Act as authorized in this chapter, the provisions of Code Section 36-30-7.1 shall not apply for two years from the date the first elected officials of such municipal corporation take office. No later than July 1 following the expiration of such two-year period, the governing authority of the municipal corporation shall file a certification with the Department of Community

Affairs stating whether the municipal corporation does or does not meet the standards for an active municipality under subsection (b) of Code Section 36-30-7.1. (Ga. L. 1963, p. 251, § 2; Ga. L. 1967, p. 718, § 1; Ga. L. 1971, p. 90, § 1; Ga. L. 1996, p. 399, § 1; Ga. L. 2005, p. 185, § 1/HB 36.)

Editor's notes. — Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

JUDICIAL DECISIONS

Section not retroactive. — When a municipality was created prior to this section, the restrictions of this section do not apply to an amendatory Act. To construe this section as applicable to Acts amending the corporate powers of municipalities in existence prior to this section would violate the statute's plain and unambiguous language, and the constitutional prohibition against enactment of retroactive laws. Brown v. City of Marietta, 220 Ga. 826, 142 S.E.2d 235 (1965) (see O.C.G.A. § 36-31-2).

Cited in Meredith v. Meredith, 240 Ga. 226, 240 S.E.2d 75 (1977).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 13.

36-31-3. Minimum population standards for proposed municipal corporation.

To be eligible for original incorporation as a municipal corporation, the minimum population standards of the area embraced within the proposed municipal boundary shall be as follows:

(1) A total resident population of at least 200 persons; and

(2) An average resident population of at least 200 persons per square mile for the total area. (Ga. L. 1963, p. 251, § 3.)

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 25.

36-31-4. Use and subdivision of areas proposed to be incorporated.

To be eligible for original incorporation as a municipal corporation, the area embraced shall be so developed that at least 60 percent of the total number of lots and tracts in the area at the time of incorporation

are used for residential, commercial, industrial, institutional, recreational, or governmental purposes and shall be subdivided into lots and tracts such that at least 60 percent of the total acreage, not counting the acreage which at the time of incorporation is used for, held for future use for, or subject to a contract for future use for commercial, industrial, governmental, recreational, or institutional purposes, consists of lots and tracts of five acres or less in size. (Ga. L. 1963, p. 251, § 4; Ga. L. 1986, p. 10, § 36; Ga. L. 2005, p. 185, § 2/HB 36.)

Editor's notes. — Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 26, 27.

36-31-5. Certificate of existence of minimum standards; manner of determination; disposition and evidentiary effect of certificate.

Every local law granting an original municipal charter shall have attached thereto a certificate by the author of the bill stating that the minimum standards required by this chapter exist as to the area embraced. Existence of the standards may be determined, as to population, by estimate based on the number of dwellings in the area multiplied by the average family size in the area, as determined by the last preceding federal census or by other reliable evidence acceptable to the author. As to development of the area, existence of the standards may be determined by estimate based on actual survey, county maps or records, aerial photographs, or some other reliable map acceptable to the author. The certificate shall be a permanent part of the charter and shall constitute conclusive evidence of the existence of the standards required by this chapter. (Ga. L. 1963, p. 251, § 5.)

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 24.

36-31-6. Responsibility of the Attorney General for preclearances.

When a new municipal corporation is created by local Act, the Attorney General shall be responsible for seeking any and all

preclearances required in connection with such Act and incorporation under the federal Voting Rights Act of 1965, as amended, until such time as the new municipal corporation notifies the Attorney General that it has the ability to seek any further preclearances required. (Code 1981, § 36-31-6, enacted by Ga. L. 2005, p. 185, § 3/HB 36.)

Editor's notes. — Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

36-31-7. Power to license and regulate alcoholic beverages.

When a new municipal corporation is created by local Act, the governing authority of the municipal corporation shall have all the same powers to license and regulate alcoholic beverages within its territory as did the governing authority of the county when such territory was within the unincorporated area of the county. Without limiting the generality of the foregoing, it is specifically provided that no petition, election, or other condition precedent which might otherwise be required under Title 3 to authorize sales of any alcoholic beverages shall be required in order for the governing authority of the municipality to exercise such powers. (Code 1981, § 36-31-7, enacted by Ga. L. 2005, p. 185, § 3/HB 36.)

Editor's notes. — Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

36-31-8. Transition periods for governmental functions; appointment by the Governor of interim representatives.

(a) When a new municipal corporation is created by local Act, the local Act may provide for a transition period not to exceed 24 months for the orderly transition of governmental functions from the county to the new municipal corporation. The local Act may specify the time or times during the transition period (or the method or methods for determining the time or times during the transition period) at which:

(1) Various governmental functions, services, and responsibilities will be assumed by the new municipal corporation within its territory; and

(2) The municipal court of the new municipality shall begin to exercise its jurisdiction over various subject matters.

(b) When a chartering local Act so provides for a transition period, the county in which the new municipality is located shall continue to provide within the territory of the new city all government services and functions which it provided as of the date of enactment of the chartering local Act. The county shall continue to provide such services and functions until the end of the transition period; provided, however, that the new city may assume the provision of any service or function at such earlier time as may be specified in the chartering local Act or at such earlier time as may be agreed upon by the county and the new city.

(c) When a chartering local Act so provides for a transition period, on and after the first day the initial governing authority takes office, the governing authority may from time to time adopt appropriate measures to initiate collection within the territory of the new city during the transition period of all taxes, fees, assessments, fines and forfeitures, and other moneys. Where a particular tax, fee, assessment, fine, forfeiture, or other amount collected by the city during the transition period is specifically related to the provision of a particular government service or function by the county, the service or function shall continue to be provided by the county during the transition period contingent upon payment by the city of the actual cost of providing such service or function unless otherwise provided in a written agreement between the new city and the county.

(d) When a chartering local Act so provides for a transition period, the county in which the new city is located shall not from the time of enactment of the charter until the end of the transition period remove from the county road system any road within the territory of the new city except with the agreement of the new city.

(e) When a chartering local Act so provides for a transition period, the new municipality shall not be subject to the laws specified in this subsection during the transition period; provided, however, that the new city and other political subdivisions may during the transition period commence planning, negotiations, and other actions necessary or appropriate for compliance after the transition period. During the transition period, the new municipality shall not be subject to:

(1) Chapter 70 of this title, relating to planning and service delivery strategies;

(2) Provisions of Code Section 12-8-31.1, relating to solid waste planning;

(3) Provisions of Code Section 48-13-56, relating to reporting of excise taxes collected and expended pursuant to Article 3 of Chapter 13 of Title 48; and

(4) Provisions of Code Section 36-81-8, relating to reporting of local government finances, reporting of revenues derived from a tax levied

pursuant to Article 3 of Chapter 13 of Title 48, and reporting of local government services and operations.

(f) When a chartering local Act so provides for a transition period, upon the termination of the transition period subsections (b) through (e) of this Code section shall cease to apply and the new city shall be a fully functioning municipal corporation and subject to all general laws of this state.

(g) As of the date a chartering local Act is approved by the Governor or becomes law without such approval, the Governor is authorized to appoint five persons to serve as interim representatives of the newly incorporated municipality until the election of the municipality's first governing authority. The interim representatives shall cease to serve as of the time the members of the first governing authority take office. The function of the interim representatives shall be to facilitate the provision of municipal services and facilities, the collection of taxes and fees, and the negotiation of intergovernmental agreements in preparation of the establishment of the new municipality. The interim representatives shall not have the ability to enter into any binding agreements, to expend public funds, or to incur any liability on behalf of the new municipality. Any person who is serving as or has served as an interim representative shall be ineligible to qualify for election as a member of the initial governing authority of the new municipality. (Code 1981, § 36-31-8, enacted by Ga. L. 2005, p. 185, § 3/HB 36; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, in paragraph (e)(2), substituted the present provisions for the former provisions, which read: "Provisions of Code Sections 12-8-31.1 and 12-8-39.2, relating to solid waste planning and solid waste management reporting;".

Editor's notes. — Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

36-31-9. Initial terms of office.

When a new municipal corporation is created by local Act, the chartering local Act may provide for the initial terms of office of members of the governing authority to be of any length or lengths; and the provisions of this Code section shall control over any conflicting provisions of Code Sections 21-2-541.1 and 21-2-541.2. (Code 1981, § 36-31-9, enacted by Ga. L. 2005, p. 185, § 3/HB 36.)

Editor's notes. — Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect

to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

36-31-10. Appropriation of funds for grants or loans.

The General Assembly may, in connection with the incorporation of a new municipal corporation, at any time (before, after, or contemporaneously with the passage of the chartering Act) appropriate to the Department of Community Affairs funds for grants or loans or both to a specific existing or proposed municipal corporation. When funds are so appropriated, the department shall make grants as specified by recipient, amount, and purpose and loans as specified by recipient, amount, interest rate, term, and purpose in the appropriation unless the chartering Act fails to secure passage or otherwise fails to become effective. (Code 1981, § 36-31-10, enacted by Ga. L. 2005, p. 185, § 3/HB 36.)

Editor's notes. — Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

36-31-11. Removal of new municipal corporations from county special districts for provision of local government services.

When a municipal corporation is created by local Act within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county, the territory within the new municipal corporation shall be removed from the special district except to the extent otherwise provided by Code Section 36-31-8 during a transition period and except that the county may continue to levy within such territory any previously imposed tax for the purpose of retiring any special district debt until such time as such debt is retired. (Code 1981, § 36-31-11, enacted by Ga. L. 2005, p. 185, § 3/HB 36.)

Editor's notes. — Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

36-31-11.1. Municipality control over parks and fire stations; obligation of county.

(a) As used in this Code section, the term:

(1) "County" means a county in which a tax is being levied and collected for purposes of a metropolitan area system of public transportation.

(2) "Fire station" means any property or facility that is located wholly within the territory of a qualified municipality, owned by the county or subject to a lease-purchase or installment sale arrangement by the county, and used by the county as of the date immediately prior to the date the local Act incorporating a qualified municipality became law to provide fire protection services authorized by Article IX, Section II, Paragraph III(a)(1) of the Constitution. Such term shall include any buildings, fixtures, or other improvements on such property or in such facilities.

(3) "Park" means any property or facility that is located wholly within the territory of a municipality, including but not limited to athletic fields, athletic courts, recreation centers, playgrounds, swimming pools, arts centers, historical properties, and adjacent greenspace, owned by the county, or subject to a lease-purchase or installment sale arrangement by the county and used by the county as of the date immediately prior to the date the local Act incorporating a qualified municipality became law to provide any services authorized by Article IX, Section II, Paragraph III(a)(5) of the Constitution or to provide any services authorized by Article IX, Section II, Paragraph III(a)(10) of the Constitution. Such term shall include any buildings, fixtures, or other improvements on such property or in such facilities.

(4) "Qualified municipality" means any new municipality located in a county and created by local Act which becomes law on or after January 1, 2008.

(b) A qualified municipality that succeeds to the control of local government services pursuant to Article IX, Section II, Paragraph III(a) of the Constitution may take control of and hold title to parks and fire stations as a trustee or agent for the public.

(c)(1) A qualified municipality located within a county which has a special district for the provision of fire services shall continue to be part of such special fire district where the local Act creating such qualified municipality so provides or where the governing authority of the qualified municipality elects by formal resolution to continue to be part of the special fire district and delivers a copy of such resolution to the governing authority of the county within 30 days after the date the resolution is adopted.

(2) If a qualified municipality initially elected to remain in a fire services special district, such municipality shall be removed from such fire services special district by adopting a resolution stating its

intent to be removed from the district and the date of removal, provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county. The fire services shall be discontinued by the county on the first day of the next fiscal year of the county that begins at least 180 days after the specified notice is received by the county.

(d) A qualified municipality located within a county that charges fees on a periodic basis for the provision of water or sewer services, or both, may elect to continue receiving such services for the same fees charged residents in the unincorporated area of the county. Such election may be set forth in the local Act creating such qualified municipality or be made by resolution of the governing authority of the qualified municipality provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county within 30 days after the date the resolution is adopted.

(e) The county shall not convey, otherwise encumber, move any fixtures or buildings, or enter into or renew any contractual obligations with respect to any park or fire station located in the qualified municipality. The governing authority of the county shall assign to the governing authority of the qualified municipality all of its right, title, and interest in any executory contract in effect on any park or fire station that the qualified municipality elects to purchase as provided in this Code section. Such assignment shall be effective on the date the municipality assumes ownership of any such park or fire station or as otherwise may be agreed between the governing authority of the municipality and the governing authority of the county.

(f) A municipality may elect to purchase parks within the territory of the municipality from the county in which the municipality is located. Notwithstanding any other law to the contrary, whenever a municipality elects to purchase any such parks, the governing authority of the municipality shall provide written notice to the governing authority of the county specifying the parks to be purchased and the date or dates the municipality will assume ownership of such parks; the purchase price for such parks shall be $100.00 per acre. Such notice shall be provided for each such park no less than 30 days prior to the date the municipality intends to assume ownership.

(g) Upon the payment of the purchase price, all of the county's right, title, and interest in the parks that the municipality elects to purchase shall be transferred to the governing authority of the municipality. Such transfer shall be effective on the date the municipality intends to assume ownership of such parks and as stated in the notice given pursuant to subsection (f) of this Code section. The governing authority of the county shall transfer, execute, and deliver to the governing authority of the municipality such instruments as may be necessary to

record the transfer of such right, title, and interest. Notwithstanding any provision in any property deed or law to the contrary, a municipality may purchase a park from the county without permission of the state and may use such park for all purposes for which the county was authorized under such deed or law.

(h) In the event a park is transferred by a county to a municipality under this Code section, the municipality shall be prohibited from imposing or collecting user fees from residents of the county in excess of the amount of such fees imposed or collected from residents of the municipality.

(i) Where residents of a municipality are required pursuant to Code Section 36-31-11 to continue to pay taxes for the purpose of retiring any special district debt created by the issuance of bonds by the county on behalf of the special district for the purpose of improving parks and the municipality elects to purchase any such park pursuant to this Code section, the county shall transfer to the municipality as an agent of the special district the portion of the bond proceeds that the county planned to spend on such park at the time of the referendum on the bonds, based upon any statements of intention or representations concerning use of the bond proceeds by the governing authority of the county. Such amount shall be determined based on county resolutions and any attachments thereto, staff recommendations, or similar documents presented at the time of passage of a resolution, county records, and any public statements or representations made by county managers, representatives, officials, or their agents as to the amount that would be spent on such park in order to solicit voter support for the referendum; provided, however, that the amount to be transferred by the county to the municipality shall be reduced by any amount spent by the county to improve such park prior to the date of the municipality's notice of its election to purchase the park as provided in subsection (f) of this Code section. The transfer shall be due within 30 days after the municipality assumes ownership of any such park. The municipality shall be required to expend any such funds for and on behalf of the special district in a manner consistent with the purpose and intent of the issuance of the bonds.

(j) A qualified municipality may elect to purchase one or more fire stations from the county in which it is located. Notwithstanding any other law to the contrary, whenever a qualified municipality elects to purchase a fire station from the county, the governing authority of the qualified municipality shall provide written notice to the governing authority of the county specifying the fire station to be purchased and the date or dates the qualified municipality will assume ownership of such fire station. Such notice shall be provided with respect to each such property no less than 30 days prior to the date the qualified municipality intends to assume ownership of the fire station.

(k)(1) Except as otherwise provided in paragraph (2) of this subsection, if a qualified municipality elects to purchase a fire station that serves only territory wholly within the qualified municipality, the purchase price shall be $5,000.00 for each such fire station.

(2) If the county uses a fire station to serve an area located outside the qualified municipality, the purchase price for each such fire station shall be $5,000.00 plus an additional amount determined as provided in this paragraph. Such additional amount shall be the product of the fair market value of such fire station multiplied by the percentage of the total service area of such fire station which is located outside of the corporate limits of the qualified municipality. If the portion served outside the qualified municipality exceeds 20 percent of the total service area, then from the date the qualified municipality assumes ownership of such fire station, the qualified municipality shall be obligated to offer to lease the fire station back to the county for a period not to exceed two years for an amount of $10.00 for the lease period.

(l) If a county and municipality fail to reach an agreement on the amount to be paid or any related matter under this Code section, either the county or the municipality may petition the superior court to seek resolution of the items in dispute. Such petition shall be assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit. The visiting or senior judge shall conduct an evidentiary hearing or hearings as such judge deems necessary and render a decision with regard to the disputed items. (Code 1981, § 36-31-11.1, enacted by Ga. L. 2010, p. 4, § 1/HB 203; Ga. L. 2012, p. 810, § 1/HB 990.)

Effective date. — This Code section became effective May 7, 2010.

The 2012 amendment, effective May 1, 2012, deleted "and in which a public safety and judicial facilities authority has been activated by the county pursuant to Chapter 75 of this title" following "public transportation" in paragraph (a)(1); in paragraphs (a)(2) and (a)(3), inserted "that is" near the beginning, inserted a comma following "county", and inserted "as of the date immediately prior to the date the local Act incorporating a qualified municipality became law" in the first sentence, and added the last sentence; deleted "including buildings and fixtures located on such property" preceding "owned by" in the first sentence of paragraph (a)(2); deleted "and the fixtures located on such property or in such facility" preceding "owned by" in the first sentence of paragraph (a)(3); and inserted "or renew" in the first sentence of subsection (e).

Editor's notes. — Ga. L. 2012, p. 810, § 3/HB 990, not codified by the General Assembly, provides: "This Act shall not be applied to impair any obligation of contract entered into prior to the date this Act becomes effective." The effective date of this Act is May 1, 2012.

36-31-12. Legislative findings; special districts divided into noncontiguous areas; information required in audits; informational summary.

(a) The General Assembly finds that:

(1) The purpose of a special district is to provide services to a given geographic area and to finance the provision of those services from taxes, fees, and assessments levied in the geographic area which benefits from the services;

(2) The creation of a municipal corporation within a county which has a special district for the unincorporated area of the county may result in the special district being divided into noncontiguous areas or in existing noncontiguous areas of such district being even more remote from each other; and

(3) The purpose of a special district is defeated if it becomes divided into noncontiguous areas which are remote from each other and one or more of such noncontiguous areas is subsidizing the provision of services in other such noncontiguous areas.

(b)(1) When a municipal corporation is created by local Act within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county and following the creation of said municipal corporation the special district is divided into two or more noncontiguous areas, any special district taxes, fees, and assessments collected in such a noncontiguous area shall be spent to provide services in that noncontiguous area. Effective January 1, 2006, for the purposes of this Code section, a noncontiguous area located within ten miles of another noncontiguous area may be treated as the same noncontiguous area.

(2) If, on or after May 14, 2008:

(A) Excess proceeds derived from the collection of any special district taxes, fees, and assessments or from any earnings thereon remain following the expenditure required under paragraph (1) of this subsection; and

(B) All of the area within the special district shall have become incorporated within one or more municipalities,

then the excess proceeds shall be disbursed within 60 days to the governing authority of each municipality which has incorporated any portion of the area of the special district; and the county shall continue to make such disbursements for so long as such excess proceeds continue to be received. The amount of proceeds to be disbursed to each municipality shall be determined on a pro rata

basis using as a denominator the total value of all tax parcels within the special district and as a numerator the total value of all tax parcels which were incorporated within each municipality.

(3) If, on or after May 14, 2008:

(A) Excess proceeds remain from the collection of any special district taxes, fees, and assessments or from any earnings thereon; and

(B) A new municipality shall have been created from within such special district such that the special district shall have been diminished in size but not all of the special district shall have been incorporated within one or more municipalities,

then the excess proceeds shall be disbursed within 60 days to the governing authority of each municipality which has incorporated any portion of the area of the special district; and the county shall continue to make such disbursements for so long as such excess proceeds continue to be received. The amount of proceeds to be disbursed to each municipality shall be determined on a pro rata basis using as a denominator the total value of all tax parcels within the special district and as a numerator the total value of all tax parcels which were incorporated within each municipality.

(c) When a municipal corporation is created by local Act within a county subject to this Code section, the county shall for the fiscal year in which the municipal corporation is chartered and for each of the next two fiscal years have included in its annual audit detailed findings as to:

(1) The amount of any special district taxes, assessments, and fees collected in each noncontiguous area of the special district;

(2) The total amount of expenditures by the county for:

(A) The provision of services within each noncontiguous area of the special district, including only those services which are provided by the county only in the special district; and

(B) The construction and maintenance of facilities for the provision of services referred to in subparagraph (A) of this paragraph; and

(3) The amount by which expenditures stated in paragraph (2) of this subsection exceed or are less than the amount stated in paragraph (1) of this subsection.

(d) The party performing the audit required by subsection (c) of this Code section shall prepare as promptly as is practicable a brief informational summary of the audit findings required by that subsec-

tion. The informational summary shall also include a statement of the amount of proceeds collected by the county pursuant to any tax under Article 2 of Chapter 8 of Title 48 which would be allocated to each noncontiguous area of the special district if such area received an allocation equal on a per capita basis to the average per capita allocation to the cities in the county. After each year's summary becomes available, a copy of the summary shall be included with the next ad valorem tax bills mailed by the county to residents of the special district consisting of the unincorporated area of the county.

(e) For purposes of determining applicability of this Code section, a county shall be considered to have a special district for the provision of local government services when a county has created a special district for such purposes pursuant to Article IX, Section II, Paragraph VI of the Constitution or has created a similar district for the provision of services under any other provision of any past or present Constitution or law. (Code 1981, § 36-31-12, enacted by Ga. L. 2005, p. 185, § 3/HB 36; Ga. L. 2006, p. 65, § 1/SB 399; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2008, p. 1019, § 2/SB 154; Ga. L. 2012, p. 810, § 2/HB 990.)

The 2012 amendment, effective May 1, 2012, in paragraph (b)(2), inserted "or after" in the introductory language, inserted "derived from the collection of any special district taxes, fees, and assessments or from any earnings thereon" in subparagraph (b)(2)(A), and inserted "; and the county shall continue to make such disbursements for so long as such excess proceeds continue to be received" in the concluding language; and, in paragraph (b)(3), inserted "or after" in the introductory language, inserted "or from any earnings thereon;" in subparagraph (b)(3)(A), and inserted "; and the county shall continue to make such disbursements for so long as such excess proceeds continue to be received." in the concluding language.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "May 14, 2008" was substituted for "the effective date of this paragraph" in paragraphs (b)(2) and (b)(3).

Editor's notes. — Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

Ga. L. 2012, p. 810, § 3/HB 990, not codified by the General Assembly, provides: "This Act shall not be applied to impair any obligation of contract entered into prior to the date this Act becomes effective." The effective date of this Act is May 1, 2012.

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 36-31-12(b) did not violate the Georgia Constitution by encroaching on a county's exclusive authority, derived from a local constitutional amendment (Ga. L. 1972, p. 1482, § 1), over the collection and expenditure of revenues collected within the county's special taxing and spending district; the amendment granted concurrent authority to the county and the General Assembly over these matters. Fulton County v. Perdue, 280 Ga. 807, 631 S.E.2d 362 (2006).

Applicability. — There is nothing in

the language of O.C.G.A. § 36-31-12 indicating a legislative intent that th statute apply only to special taxing and spending districts with newly created noncontiguous areas. Fulton County v. Perdue, 280 Ga. 807, 631 S.E.2d 362 (2006).

CHAPTER 32

MUNICIPAL COURTS

Article 1

General Provisions

Sec.

36-32-1. Establishment of municipal court; punishments; selection, election, or appointment of mayor pro tempore or recorder pro tempore.
36-32-1.1. Municipal court judges; qualifications to serve.
36-32-2. Appointment of judges.
36-32-3. Powers of judges.
36-32-4. Authority of municipal corporations to provide for forfeiture of appearance bonds.
36-32-5. Sentences and fines which may be imposed.
36-32-6. Jurisdiction in marijuana possession cases; retention of fines and forfeitures; transfer of cases.
36-32-6.1. Jurisdiction in cases involving transactions in drug objects; disposition of fines; transfer of cases.
36-32-7. Jurisdiction in cases of operating motor vehicle without effective insurance; retention of fines and forfeitures; transfer of cases.
36-32-8. Jurisdiction in cases of operating motor vehicle without certificate of emission inspection; retention of fines and forfeitures; transfer of cases.
36-32-9. Jurisdiction of shoplifting of $300.00 or less; transfer of cases; penalties; retention of fines and forfeitures; reports.
36-32-10. Jurisdiction in cases of furnishing alcoholic beverages to and purchase and possession of alcoholic beverages by underage persons; retention of fines and forfeitures; transfer of cases; penalties.

Sec.

36-32-10.1. Jurisdiction in counties without state court to try violations of Code Section 16-7-21; retention of fines and forfeitures; transfer of cases; penalties.
36-32-10.2. Trial upon citation, summons, or accusation.
36-32-10.3. Jurisdiction over littering offenses.
36-32-11. Required training for judges.
36-32-12. Municipal court held outside municipality.
36-32-13. Municipal court clerks; role of Municipal Courts Training Council.

Article 2

Georgia Municipal Courts Training Council

36-32-20. Short title.
36-32-21. Definitions.
36-32-22. Establishment of Georgia Municipal Courts Training Council; membership.
36-32-23. Oath of office.
36-32-24. Election of chairman and vice-chairman; secretary; quorum; minutes; annual report.
36-32-25. Remuneration.
36-32-26. Functions, powers, and responsibilities.
36-32-27. Mandatory training of municipal judges.

Article 3

Council of Municipal Court Judges

36-32-40. Creation of council; membership and organization; purpose; expenses; contracts; assistance to council; members not ineligible to hold office of judge.

Cross references. — City courts, T. 15, C. 8.

Law reviews. — For article, "The City Court of Atlanta and the 1983 Georgia Constitution: Is the Judicial Engine Souped Up or Blown Up?," see 15 Ga. St. U. L. Rev. 941 (1999). For annual survey article, "'Garbage In, Garbage Out': The Litigation Implosion Over the Unconstitutional Organization and Jurisdiction of the City Court of Atlanta," see 52 Mercer L. Rev. 49 (2000).

ARTICLE 1

GENERAL PROVISIONS

36-32-1. Establishment of municipal court; punishments; selection, election, or appointment of mayor pro tempore or recorder pro tempore.

(a) Each municipal corporation of this state shall, unless otherwise provided in the local law relating to a particular municipal corporation, be authorized to establish and maintain a municipal court having jurisdiction over the violation of municipal ordinances and over such other matters as are by general law made subject to the jurisdiction of municipal courts. Any such court shall be styled as a municipal court. Any reference in this Code or in any local law to a corporate court, police court, recorder's court, mayor's court, or any such court known by any other name which has jurisdiction over the violation of municipal offenses shall be deemed to mean a municipal court. Except in this Code section and in the laws relating to the City Court of Atlanta, the terms "corporate court," "corporate courts," "police court," "police courts," "recorder's court," "recorders' courts," "mayor's court," and "mayors' courts," when such terms refer to a court of a municipal corporation, are stricken wherever they appear in any general or local law of this state and the term "municipal court" or "municipal courts," whichever is appropriate, is inserted in lieu thereof. The change in the name of any such court as provided for by Article VI, Section X, Paragraph I of the Constitution of the State of Georgia and by this Code section shall not affect the validity of any action or prosecution in such court.

(b) The provisions of this chapter shall apply equally to all municipal courts, whether heretofore styled as a municipal court, corporate court, police court, recorder's court, or mayor's court or called by some other name and whether established by the municipal corporation under authority granted to the municipal corporation or established by the local law relating to a particular municipal corporation.

(c) Each municipal court of this state, unless otherwise provided in the local law relating to a particular municipal court, shall be authorized to impose any punishment up to the maximums specified by general law, including the maximums specified in subparagraphs (a)(2)(B) and (a)(2)(C) of Code Section 36-35-6.

(d) The governing bodies of the municipal corporations of this state having a municipal court are authorized and empowered, either by ordinance or resolution, to select, elect, or appoint either a mayor pro tempore or a recorder pro tempore to hold and preside over such municipal court in the absence or disqualification of the mayor or recorder. While presiding in such corporate courts, the mayor pro tempore or recorder pro tempore shall have such power, authority, and jurisdiction as is given by the charter of the municipal corporation to its mayor or recorder.

(e) Subsection (d) of this Code section shall not affect any municipal corporation for which provision is made in the charter for the appointment or selection of a mayor pro tempore or a recorder pro tempore.

(f) Any municipal court operating within this state and having jurisdiction over the violation of municipal ordinances and over such other matters as are by specific or general law made subject to the jurisdiction of municipal courts shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation, or other loss of liberty, as authorized by general law or municipal or county ordinance, unless the court provides to the accused the right to representation by a lawyer, and provides to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Standards Council for representation of indigent persons in this state.

(g) Any municipal court operating within this state that has jurisdiction over the violation of municipal or county ordinances or such other statutes as are by specific or general law made subject to the jurisdiction of municipal courts, and that holds committal hearings in regard to such alleged violations, must provide to the accused the right to representation by a lawyer, and must provide to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Standards Council for representation of indigent persons in this state.

(h) Any municipality or municipal court may contract with the office of the circuit public defender of the judicial circuit in which such municipality is located as a means of complying with the municipality's or municipal court's legal obligation to provide defense counsel at no cost to indigent persons appearing before the court in relation to violations of municipal ordinances, county ordinances, or state laws. (Ga. L. 1922, p. 133, §§ 1, 2; Code 1933, §§ 69-702, 69-703; Ga. L. 1986, p. 784, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 2003, p. 191, § 9.)

Cross references. — Constitutional provisions regarding courts with municipal jurisdiction, Ga. Const. 1983, Art. VI, Sec. X, Para. I.

Law reviews. — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 105 (2003).

JUDICIAL DECISIONS

Municipal court not a city court or court of record. — Municipal court established as part of the charter for a city was not a city court and was not a court of record authorized to grant new trials. City of Lawrenceville v. Davis, 233 Ga. App. 1, 502 S.E.2d 794 (1998).

Cited in Felix v. State, 241 Ga. App. 323, 526 S.E.2d 637 (1999); Nguyen v. State, 282 Ga. 483, 651 S.E.2d 681 (2007).

36-32-1.1. Municipal court judges; qualifications to serve.

Municipal court judges shall be licensed to practice law in the State of Georgia and an active member in good standing of the State Bar of Georgia; provided, however, that any judge serving on June 30, 2011, who does not meet the qualifications required by this Code section may serve as municipal court judge in any municipality so long as such judge is in compliance with Code Section 36-32-27. The provisions of this Code section shall expressly supersede any conflicting local law of this state. (Code 1981, § 36-32-1.1, enacted by Ga. L. 2011, p. 398, § 1/SB 30.)

Effective date. — This Code section became effective July 1, 2011.

36-32-2. Appointment of judges.

(a) Notwithstanding any other provision of this chapter or any general or local Act, the governing authority of each municipal corporation within this state having a municipal court, as provided by the Act incorporating the municipal corporation or any amendments thereto, is authorized to appoint a judge of such court. Any person appointed as a judge under this Code section shall possess such qualifications and shall receive such compensation as shall be fixed by the governing authority of the municipal corporation and shall serve at the pleasure of the governing authority.

(b) This Code section shall not be construed to require the governing authority of any municipal corporation to appoint a judge; but such governing authority may appoint a judge if, acting in its sole discretion, the governing authority determines that such appointment would be in the best interest of the municipal corporation. (Code 1933, § 69-704.1, enacted by Ga. L. 1973, p. 489, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1995, p. 712, § 1.)

JUDICIAL DECISIONS

Separation of powers. — Because a municipal court is a municipal office discharging strictly municipal functions, O.C.G.A. § 36-32-2(a) does not violate the separation of powers doctrine of Ga. Const. 1983, Art. I, Sec. II, Para. III and the city was authorized to require the judge to reinstate the contract between the county and the private probation services company. Ward v. City of Cairo, 276 Ga. 391, 583 S.E.2d 821 (2003).

Judge was qualified to preside over case. — Municipal court judge was qualified to preside over the case although the judge was not a resident of the judicial circuit in which the court was located, when neither the mayor nor another member of the governing authority of the city served as a judge of the municipal court. Giles v. City of Locust Grove, 203 Ga. App. 164, 416 S.E.2d 758, cert. denied, 203 Ga. App. 906, 416 S.E.2d 758 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Clerk of Superior Court may not serve as Judge of Mayor's Court. — Clerk of the Superior Court is prohibited by a common-law conflict of interest from simultaneously serving as the Judge of the Mayor's Court. 1984 Op. Att'y Gen. No. U84-22.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 5, 7. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 205, 209.

C.J.S. — 16 C.J.S., Constitutional Law, § 288 et seq. 48A C.J.S., Judges, § 22 et seq. 62 C.J.S., Municipal Corporations, §§ 407, 418 et seq., 447, 448, 455.

36-32-3. Powers of judges.

All judges of all municipal courts in this state shall have and are given the same powers and authorities as magistrates in the matter of and pertaining to criminal cases of whatever nature in the several courts of this state. (Ga. L. 1935, p. 458, § 1; Ga. L. 1983, p. 884, § 3-26; Ga. L. 1987, p. 3, § 36.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1880-81, p. 176, are included in the annotations for this Code section.

Officers ex officio justice. — Recorder is ex officio a justice of the peace (now magistrate) for the purpose of committing the defendant for state offenses disclosed in investigations made in the police court. Smith v. City of Atlanta, 5 Ga. App. 492, 63 S.E. 569 (1909) (decided under Ga. L. 1880-81, p. 176).

Cited in Savannah News-Press, Inc. v. Harley, 100 Ga. App. 387, 111 S.E.2d 259 (1959); Hall v. State, 113 Ga. App. 587, 149 S.E.2d 175 (1966); Pass v. State, 227 Ga. 730, 182 S.E.2d 779 (1971); Richards v. State, 131 Ga. App. 362, 206 S.E.2d 93 (1974); Branch v. State, 248 Ga. 300, 282 S.E.2d 894 (1981); Focus Entm't Int'l, Inc. v. Bailey, 256 Ga. App. 283, 568 S.E.2d 183 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Mayor of a city has no right to try a case involving a state offense, when the defendant is caught within the city limits, in a county which has a superior court but does not have a city court. 1958-59 Op. Att'y Gen. p. 216.

Power to issue arrest warrants. — Under former Code 1933, § 27-102 (see O.C.G.A. § 17-4-40), the power of ex officio justices of the peace (now magistrates) includes the authority to issue warrants for the arrest of offenders against the penal laws of this state. 1960-61 Op. Att'y Gen. p. 96.

36-32-4. Authority of municipal corporations to provide for forfeiture of appearance bonds.

Any municipal corporation shall have full power and authority to provide, by ordinance, for the forfeiture of bonds given by offenders for their appearance before municipal courts and to provide for the collection of the same from the principal and sureties on such bonds by judgment, execution, and sale. (Ga. L. 1880-81, p. 176, § 1; Code 1933, § 69-206.)

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963).

For note, "Bail in Georgia: Elimination of 'Double Bonding': A Partially Solved Problem," see 8 Ga. St. B.J. 220 (1971).

JUDICIAL DECISIONS

Liability of surety on criminal appearance bond. — City ordinance which seeks to hold the surety liable on a criminal appearance bond until the fine imposed is collected does not conflict with Georgia case law; is authorized by O.C.G.A. § 36-32-4, which authorizes municipal corporations to make provision by ordinance as to what constitutes the forfeiture of bonds given by offenders for their appearance before municipal courts; and does not conflict with O.C.G.A. § 17-6-31 (surrender on surety bonds); for these reasons, there has not been preemption by the state in this area of regulatory activity. Therefore, the ordinance is not unconstitutional under the special law — general law prohibition contained in Ga. Const. 1983, Art. III, Sec. VI, Para. IV. City of Macon v. Davis, 251 Ga. 332, 305 S.E.2d 116 (1983).

36-32-5. Sentences and fines which may be imposed.

All municipal courts having authority to try offenses against the laws of the municipal corporations in which such courts are located shall have the power and authority:

(1) To impose fines upon persons convicted of such offenses, with the alternative of other punishment allowed by law, in the event that such fines are not paid;

(2) To sentence such person to community service work; or

(3) To impose a sentence consisting of any combination of the penalties provided for in this Code section. (Ga. L. 1878-79, p. 153,

§ 1; Civil Code 1895, § 712; Civil Code 1910, § 857; Code 1933, § 69-704; Ga. L. 1985, p. 1391, § 1; Ga. L. 1987, p. 3, § 36.)

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Mayor authorized to impose sentence consisting of fine, or in case of default, labor upon public streets. Leonard v. Mayor of Eatonton, 126 Ga. 63, 54 S.E. 963 (1906).

For contrary view, holding that mayor had no power in absence of express legislative authority to impose a sentence of labor, see Brieswick v. Brunswick, 51 Ga. 639 (1874); Carr v. City of Conyers, 84 Ga. 287, 10 S.E. 630 (1890); Williams v. Sewell, 121 Ga. 665, 49 S.E. 732 (1905).

Sentencing authority of recorder courts. — Enactment of O.C.G.A. § 36-32-5 did not evince a legislative intent to limit the authority of a recorder's court to the imposition of an alternative sentence consisting of either a fine or other punishment; the intent was merely to broaden the authority of a recorder's court so as to permit the imposition of such an alternative sentence in addition to the fine. City of LaGrange v. Hatfield, 175 Ga. App. 697, 334 S.E.2d 25 (1985) (construing section as it existed prior to 1985 amendment).

Ordinances construed together. — When three ordinances of a city provide, among other things, that the judge of the municipal court may impose, under certain circumstances, a fine or confinement in the station house, or both, and upon the refusal of the defendant to pay the fine, the court may by order require the person so refusing to work on the streets or some public works, such ordinances, relative to the enforcement thereof by the imposition of a fine are to be construed together. Lyons v. Collier, 125 Ga. 231, 54 S.E. 183 (1906); Jones v. Lanford, 141 Ga. 646, 81 S.E. 885 (1914).

When one sentence is unauthorized. — Sentence imposing two penalties in the alternative, one of which is unauthorized, is not void, but may be enforced as to the penalty which is authorized. Brown v. City of Atlanta, 123 Ga. 497, 51 S.E. 507 (1905).

Alternative provisions. — When, under the charter and ordinances of a city, the mayor has authority to punish one convicted of violating the municipal ordinances by imprisonment or compulsory labor on public works, or by fine, a sentence directing "confinement on the streets" is not rendered unlawful merely because an alternative provision is added by which the defendant may be discharged at any time upon the payment of a fine. Shuler v. Willis, 126 Ga. 73, 54 S.E. 965 (1906).

Sentence held to be alternative. — When, upon the trial of one charged with the violation of a municipal ordinance, the court, on conviction of the accused, rendered judgment that the defendant pay a fine of $25.00 dollars, or, in default thereof, that the defendant be imprisoned in the calaboose 30 days, such judgment imposed an alternative sentence. Leonard v. Mayor of Eatonton, 126 Ga. 63, 54 S.E. 963 (1906); Hardy v. Mayor of Eatonton, 128 Ga. 27, 57 S.E. 99 (1907).

Review after execution. — Defendant who has paid a fine imposed by a police court, with the alternative of imprisonment, cannot, after paying such fine, prosecute a writ of error to review the judgment unless the fine was paid under protest and under duress. Brown v. City of Atlanta, 123 Ga. 497, 51 S.E. 507 (1905); White v. City of Tifton, 1 Ga. App. 569, 57 S.E. 1038 (1907); Kitchens v. State, 4 Ga. App. 440, 61 S.E. 736 (1908).

Cited in Maner v. Dykes, 183 Ga. 118, 187 S.E. 699 (1936); City of Albany v. Key, 124 Ga. App. 16, 183 S.E.2d 20 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 12.

C.J.S. — 62 C.J.S., Municipal Corporations, § 323 et seq.

ALR. — Delegating authority to county or municipal corporation to make violation of ordinance crime or to provide criminal punishment, 174 ALR 1343.

36-32-6. Jurisdiction in marijuana possession cases; retention of fines and forfeitures; transfer of cases.

(a) The municipal court of any municipality is granted jurisdiction to try and dispose of cases where a person is charged with the possession of one ounce or less of marijuana if the offense occurred within the corporate limits of such municipality. The jurisdiction of any such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with possession of an ounce or less of marijuana in a municipal court shall be entitled on request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county wherein the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter. (Code 1981, § 36-32-6, enacted by Ga. L. 1983, p. 825, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1997, p. 1377, § 3.)

Cross references. — Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana, § 16-13-30.

Editor's notes. — Ga. L. 1997, p. 1377, § 4, not codified by the General Assembly, provides that: "it is the intent of the General Assembly to restore the law of this state to that which was generally understood to be the law prior to the decision of the Court of Appeals in *Williams v. State,* 222 Ga. App. 698, Case No. A96A1472, decided August 20, 1996, such that possession of one ounce or less of marijuana is a misdemeanor and the provisions of Code Section 36-32-6 are applicable to such offenses."

36-32-6.1. Jurisdiction in cases involving transactions in drug objects; disposition of fines; transfer of cases.

(a) The municipal court of any municipality shall be granted jurisdiction to try and dispose of cases where a person is charged with transactions in drug related objects in violation of Code Section 16-13-32 if the offense occurred within the corporate limits of such

municipality. The jurisdiction of any such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with transactions in drug related objects in violation of Code Section 16-13-32 in a municipal court shall be entitled, upon request, to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county where the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter. (Code 1981, § 36-32-6.1, enacted by Ga. L. 2012, p. 53, § 5/SB 352.)

Effective date. — This Code section became effective April 11, 2012.

Cross references. — Prosecuting attorneys of municipal courts, § 15-18-90 et seq.

36-32-7. Jurisdiction in cases of operating motor vehicle without effective insurance; retention of fines and forfeitures; transfer of cases.

(a) The municipal court of each municipality is granted jurisdiction to try and dispose of cases where a person is charged with a misdemeanor under Code Section 40-6-10 of knowingly operating or knowingly authorizing the operation of a motor vehicle without effective insurance of such vehicle or without an approved plan of self-insurance as required by Chapter 34 of Title 33, the "Georgia Motor Vehicle Accident Reparations Act," if the offense occurred within the corporate limits of such municipality. The jurisdiction of each such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with a misdemeanor under Code Section 40-6-10 in a municipal court shall be entitled on request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter. (Ga. L.

1974, p. 113, § 14; Ga. L. 1978, p. 1369, § 1; Code 1981, § 36-32-7, enacted by Ga. L. 1985, p. 891, § 2; Ga. L. 1987, p. 3, § 36; Ga. L. 1991, p. 94, § 36; Ga. L. 1992, p. 6, § 36.)

Editor's notes. — The provisions of this Code section previously appeared in substantially similar form in subsections (b) through (d) of § 33-34-12, which subsections were deleted by Ga. L. 1985, p. 891, § 1.

36-32-8. Jurisdiction in cases of operating motor vehicle without certificate of emission inspection; retention of fines and forfeitures; transfer of cases.

(a) The municipal court of each municipality of each county required to comply with Article 2 of Chapter 9 of Title 12, known as the "Georgia Motor Vehicle Emission Inspection and Maintenance Act," is granted jurisdiction to try and dispose of such cases in which a person is charged with a misdemeanor under Code Section 12-9-55 of operating a responsible motor vehicle without a certificate of emission inspection, if the offense occurred within the corporate limits of such municipality. The jurisdiction of such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with a misdemeanor under Code Section 12-9-55 in a municipal court shall be entitled upon request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine in excess of the limits set forth in Code Section 12-9-55. (Code 1981, § 36-32-8, enacted by Ga. L. 1985, p. 1390, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 6, § 36; Ga. L. 1992, p. 918, § 4; Ga. L. 1993, p. 91, § 36.)

36-32-9. Jurisdiction of shoplifting of $300.00 or less; transfer of cases; penalties; retention of fines and forfeitures; reports.

(a) The municipal court is granted jurisdiction to try and dispose of cases in which a person is charged with a misdemeanor theft by shoplifting if the offense occurred within the corporate limits of the municipality. The jurisdiction of such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any person charged in a municipal court with misdemeanor theft by shoplifting shall be entitled upon request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(c) A person convicted in a municipal court of misdemeanor theft by shoplifting shall be punished as provided in paragraph (1) of subsection (b) of Code Section 16-8-14, provided that nothing in this Code section or Code Section 16-8-14 shall be construed to give any municipality the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter.

(d) Any fines and forfeitures arising from the prosecution of such cases in such municipal court shall be retained by the municipality and shall be paid into the treasury of such municipality.

(e) It shall be the duty of the appropriate agencies of the municipality in which an offense under subsection (a) of this Code section is charged to make any reports to the Georgia Crime Information Center required under Article 2 of Chapter 3 of Title 35. (Code 1981, § 36-32-9, enacted by Ga. L. 1987, p. 1153, § 1; Ga. L. 1998, p. 188, § 1; Ga. L. 1999, p. 831, § 1; Ga. L. 2012, p. 899, § 8-14/HB 1176.)

The 2012 amendment, effective July 1, 2012, substituted "misdemeanor theft by shoplifting" for "first, second, or third offense of theft by shoplifting when the property which was the subject of the theft was valued at $300.00 or less," in subsection (a); substituted "person charged in a municipal court with misdemeanor theft by shoplifting" for "defendant charged in a municipal court with a first, second, or third offense of theft by shoplifting property valued at $300.00 or less" in subsection (b); and substituted "misdemeanor theft by shoplifting" for "a first, second, or third offense of theft by shoplifting property valued at $300.00 or less" in subsection (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, Code Section 36-32-9, as enacted by Ga. L. 1987, p. 1462, § 1, was redesignated as Code Section 36-32-10.

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

OPINIONS OF THE ATTORNEY GENERAL

Theft by shoplifting as fingerprintable offense. — O.C.G.A. § 36-23-9 does not require any modification in the designation of theft by shoplifting as an offense for which persons charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

RESEARCH REFERENCES

ALR. — Validity, construction, and effect of statutes establishing shoplifting or its equivalent as separate criminal offense, 64 ALR4th 1088.

36-32-10. Jurisdiction in cases of furnishing alcoholic beverages to and purchase and possession of alcoholic beverages by underage persons; retention of fines and forfeitures; transfer of cases; penalties.

(a) The municipal courts are granted jurisdiction to try and dispose of a first offense violation of Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age, if the offense occurred within the corporate limits of such municipal corporation. The jurisdiction of such municipal court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and forfeitures arising from the prosecution of such cases shall be retained by the municipal corporation and shall be paid into the treasury of such municipal corporation.

(c) Any defendant charged with a first offense violation of Code Section 3-3-23 in a municipal court shall be entitled upon request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) A person convicted in a municipal court of a first offense violation of Code Section 3-3-23 shall be punished as provided in paragraph (1) of subsection (b) of Code Section 3-3-23.1, provided that nothing in this Code section or Code Section 3-3-23.1 shall be construed to give any municipal corporation the right to impose a fine or punishment in excess of the limits set forth in the charter of such municipal corporation.

(e) Nothing in this Code section shall affect the original and exclusive jurisdiction of the juvenile court as set forth in Code Section 15-11-28. (Code 1981, § 36-32-10, enacted by Ga. L. 1987, p. 1462, § 1; Ga. L. 2000, p. 20, § 22.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, Code Section 36-32-9, as enacted by Ga. L. 1987, p. 1462, § 1, was redesignated as Code Section 36-32-10.

36-32-10.1. Jurisdiction in counties without state court to try violations of Code Section 16-7-21; retention of fines and forfeitures; transfer of cases; penalties.

(a) The municipal court of each municipal corporation in counties where there is no state court is granted jurisdiction to try and dispose of any violation of Code Section 16-7-21, relating to criminal trespass, if the offense occurred within the corporate limits of such municipal corporation. The jurisdiction of such municipal court shall be concurrent with the jurisdiction of any other court within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and forfeitures arising from the prosecution of any such case in the municipal court shall be retained by the municipal corporation and shall be paid into the treasury of such municipal corporation.

(c) Any defendant charged with a violation of Code Section 16-7-21 in a municipal court shall be entitled upon request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) A person convicted of a violation of Code Section 16-7-21 shall be punished as provided in such Code section, provided that nothing in this Code section or in Code Section 16-7-21 shall be construed to give any municipal court the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter. (Code 1981, § 36-32-10.1, enacted by Ga. L. 1992, p. 1281, § 1.)

36-32-10.2. Trial upon citation, summons, or accusation.

Notwithstanding any other contrary provision of law, in municipal courts which have jurisdiction over misdemeanor offenses or ordinance violations, such offenses or violations may be tried upon a uniform traffic citation, summons, citation, or an accusation. (Code 1981, § 36-32-10.2, enacted by Ga. L. 2002, p. 627, § 1.)

Law reviews. — For article, "Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations? Can Alternative Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Expend Processing Nontraffic Misdemeanor Offenses?," see 22 Ga. St. U. L. Rev. 313 (2005).

JUDICIAL DECISIONS

Cited in Beaman v. City of Peachtree City, 256 Ga. App. 62, 567 S.E.2d 715 (2002).

36-32-10.3. Jurisdiction over littering offenses.

(a) Subject to the provisions of subsection (b) of this Code section, in addition to any other jurisdiction vested in the municipal courts, such courts shall have the right and power to conduct trials, receive pleas of guilty, and impose sentence upon defendants for violating any provision of Part 2, Part 3, or Part 3A of Article 2 of Chapter 7 of Title 16 or Code Section 32-6-51 or 40-6-248.1 that is punishable for its violation as a misdemeanor. Such jurisdiction shall be concurrent with other courts having jurisdiction over such violations.

(b) A municipal court shall not have the power to dispose of misdemeanor cases as provided in subsection (a) of this Code section unless the defendant shall first waive in writing a trial by jury. If the defendant does not waive a trial by jury, the defendant shall notify the court and, if reasonable cause exists, the defendant shall be immediately bound over to a court in the county having jurisdiction to try the offense wherein a jury may be impaneled. (Code 1981, § 36-32-10.3, enacted by Ga. L. 2006, p. 275, § 3-11/HB 1320.)

Editor's notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

36-32-11. Required training for judges.

(a) All judges of the municipal courts, and all judges of courts exercising municipal court jurisdiction, shall periodically satisfactorily complete a training course as provided in Article 2 of this chapter.

(b) The Georgia Municipal Courts Training Council shall keep records of training completed by municipal judges and judges of courts exercising municipal court jurisdiction.

(c) If any municipal judge, or any judge of a court exercising municipal court jurisdiction, does not satisfactorily complete the required training in any year, the Georgia Municipal Courts Training Council shall promptly notify the Judicial Qualifications Commission, which may remove the judge from office unless the Judicial Qualifications Commission finds that the failure was caused by facts beyond the control of the judge.

(d) The reasonable costs and expenses of such training shall be paid by the governing authority of the jurisdiction where the judge presides.

(e) This Code section shall not apply to any magistrate judge, probate judge, or any judge of a court of record who presides in a court

exercising municipal court jurisdiction. (Code 1981, § 36-32-11, enacted by Ga. L. 1990, p. 882, § 1; Ga. L. 2012, p. 1096, § 1/SB 351.)

The 2012 amendment, effective July 1, 2012, inserted ", and all judges of courts exercising municipal court jurisdiction," in subsection (a); added "and judges of courts exercising municipal court jurisdiction" at the end of subsection (b); in subsection (c), inserted ", or any judge of a court exercising municipal court jurisdiction," near the beginning, substituted "may remove the judge" for "shall remove the municipal judge" near the middle, and deleted "municipal" preceding "judge" near the end; substituted "jurisdiction where the judge presides" for "municipality from municipal funds" in subsection (d); and added subsection (e).

36-32-12. Municipal court held outside municipality.

Notwithstanding any other contrary provision of law, local or general, sessions of a municipal court may be held outside the municipality for which the municipal court is established if such sessions are held within a county in which the municipality is located or has its legal situs. (Code 1981, § 36-32-12, enacted by Ga. L. 2001, p. 1025, § 1.)

36-32-13. Municipal court clerks; role of Municipal Courts Training Council.

(a) For purposes of this Code section, the term:

(1) "Municipal court" shall have the same meaning as described in subsection (a) of Code Section 36-32-1.

(2) "Municipal court clerk" shall mean the primary person most directly responsible for the administration of a municipal court other than a judge of the municipal court.

(b)(1) Any person who is hired or appointed as a municipal court clerk on or after July 1, 2006, shall satisfactorily complete a minimum of 16 hours of training related to the operation of municipal court as prescribed by the Georgia Municipal Courts Training Council within his or her first year of service as a municipal court clerk.

(2) Each municipal court clerk, regardless of when he or she was hired or appointed, shall complete a minimum of eight hours of training related to the operation of municipal court as prescribed by the Georgia Municipal Courts Training Council on an annual basis. The training required by this paragraph shall be satisfied by completing the training provided for in paragraph (1) of this subsection in the municipal court clerk's first year of service.

(3) The reasonable costs and expense of training required by this Code section shall be paid by the governing authority of the municipality from municipal funds.

(c) The Georgia Municipal Courts Training Council shall keep records of training completed by municipal court clerks.

(d) In any year that any municipal court clerk does not satisfactorily complete the required training, the Georgia Municipal Courts Training Council shall promptly notify the governing authority of the applicable municipality as well as the chief municipal court judge of the applicable municipality. (Code 1981, § 36-32-13, enacted by Ga. L. 2006, p. 658, § 1/HB 1288; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (b)(2).

ARTICLE 2

GEORGIA MUNICIPAL COURTS TRAINING COUNCIL

36-32-20. Short title.

This article shall be known and may be cited as "The Georgia Municipal Courts Training Council Act." (Code 1981, § 36-32-20, enacted by Ga. L. 1990, p. 882, § 2.)

36-32-21. Definitions.

As used in this article, the term:

(1) "Certified municipal judge" means a municipal judge who has the appropriate required certificate of training issued by the council and on file with the council.

(2) "Council" means the Georgia Municipal Courts Training Council.

(3) "Municipal court" means and includes any municipal court as defined in subsection (a) of Code Section 36-32-1.

(4) "Municipal judge" means a judge of a municipal court.

(5) "School" means any school, college, university, academy, or training program approved by the council and the Judicial Council of Georgia which offers basic, in-service, advanced, specialized, or continuing judicial training or a combination thereof, and includes within its meaning a combination of course curriculum, instructors, and facilities which meet the standards required by the council. (Code 1981, § 36-32-21, enacted by Ga. L. 1990, p. 882, § 2; Ga. L. 1991, p. 326, § 1.)

36-32-22. Establishment of Georgia Municipal Courts Training Council; membership.

(a) There is established a council which shall be known and designated as the "Georgia Municipal Courts Training Council" and which shall be composed of the director of the administrative office of the courts or the director's designee, which member shall not be a voting member, and five municipal judges who shall be appointed by the Council of Municipal Court Judges of Georgia. The initial terms for two members shall expire on December 31, 1991. The initial terms for three members shall expire on December 31, 1992. Following the expiration of these initial terms, their successors shall be appointed for terms of two years.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the council, vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term.

(c) Membership on the council does not constitute public office and no member shall be disqualified from holding office by reason of his membership. (Code 1981, § 36-32-22, enacted by Ga. L. 1990, p. 882, § 2; Ga. L. 1998, p. 184, § 1.)

36-32-23. Oath of office.

Immediately and before entering upon the duties of office, the members of the Georgia Municipal Courts Training Council shall take the oath of office and shall file the same in the office of the Judicial Council of Georgia, which, upon receiving the oath of office, shall issue to each member a certificate of appointment. (Code 1981, § 36-32-23, enacted by Ga. L. 1990, p. 882, § 2; Ga. L. 1993, p. 91, § 36.)

36-32-24. Election of chairman and vice-chairman; secretary; quorum; minutes; annual report.

(a) A chairman and vice-chairman shall be elected at the first meeting of each calendar year.

(b) The director of the Administrative Office of the Courts or his designee shall serve as secretary to the council.

(c) A simple majority of the members of the council shall constitute a quorum for the transaction of business.

(d) The council shall maintain minutes of its meetings and such other records as it deems necessary.

(e) The council shall report at least annually to the Governor and to the General Assembly as to its activities. (Code 1981, § 36-32-24, enacted by Ga. L. 1990, p. 882, § 2.)

36-32-25. Remuneration.

The members of the council shall receive no salary but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their functions; provided, however, that such expenses shall not exceed those allowed to members of the General Assembly. (Code 1981, § 36-32-25, enacted by Ga. L. 1990, p. 882, § 2.)

36-32-26. Functions, powers, and responsibilities.

The council is vested with the following functions, powers, and responsibilities:

(1) To make all the necessary rules and regulations to carry out this article;

(2) To cooperate with and secure the cooperation of every department, agency, or instrumentality of the state government or its political subdivisions in furtherance of the purposes of this article;

(3) To approve schools and to prescribe minimum qualifications for instructors at approved schools;

(4) To issue a certification to any municipal court judge satisfactorily complying with an approved training program established;

(5) To do any and all things necessary or convenient to enable it wholly and adequately to perform its duties and to exercise the power granted to it; and

(6) To prescribe, by rules and regulations, the minimum requirements for curricula and standards composing the initial in-service, advanced, specialized, and continuing training courses for certification. (Code 1981, § 36-32-26, enacted by Ga. L. 1990, p. 882, § 2.)

36-32-27. Mandatory training of municipal judges.

(a) Any person who becomes a municipal judge on or after January 1, 1991, shall satisfactorily complete 20 hours of training in the performance of his or her duties within one year after the date of his or her election or appointment in order to become certified under this article. Any person serving as a municipal judge prior to January 1, 1991, shall be exempt from completing these 20 hours of training.

(b) Except as provided in subsection (d) of this Code section, any person who becomes a judge of a court exercising municipal court

jurisdiction on or after July 1, 2012, who is not subject to subsection (a) of this Code section, shall satisfactorily complete 20 hours of training in the performance of his or her duties within one year after the date of his or her election or appointment in order to become certified under this article. Any person serving as a judge of a court exercising municipal court jurisdiction prior to July 1, 2012, who is not subject to subsection (a) of this Code section, shall be exempt from completing these 20 hours of training.

(c) Except as provided in subsection (d) of this Code section, in order to maintain the status of a certified municipal judge or a certified judge of a court exercising municipal court jurisdiction, he or she shall complete 12 hours of additional training per annum during each calendar year after the year of his or her initial certification in which he or she serves as municipal judge or as judge of a court exercising municipal court jurisdiction.

(d) This Code section shall not apply to any magistrate judge, probate judge, or any judge of a court of record who presides in a court exercising municipal court jurisdiction. (Code 1981, § 36-32-27, enacted by Ga. L. 1990, p. 882, § 2; Ga. L. 2012, p. 1096, § 2/SB 351.)

The 2012 amendment, effective July 1, 2012, substituted "or her duties within one year after the date of his or her" for "his duties, prior to December 31, 1991, and shall attend the first scheduled training session held after the date of his" in the first sentence of subsection (a); added subsection (b); redesignated former subsection (b) as present subsection (c); substituted the present provisions of subsection (c) for the former provisions, which read: "In order to maintain the status of a certified municipal judge, each person certified as such shall complete 12 hours of additional training per annum during each calendar year after the year of his initial certification in which he serves as municipal judge."; and added subsection (d).

ARTICLE 3

COUNCIL OF MUNICIPAL COURT JUDGES

36-32-40. Creation of council; membership and organization; purpose; expenses; contracts; assistance to council; members not ineligible to hold office of judge.

(a) There is created a council of municipal court judges to be known as the "Council of Municipal Court Judges of Georgia." The council shall be composed of the judges of the municipal courts of this state. The council is authorized to organize itself and to develop a constitution and bylaws. The officers of said council shall consist of a president, a first vice president, a second vice president, a secretary, a treasurer, and such other officers as the council shall deem necessary. The council shall have an executive committee composed of two representatives from each judicial administrative district.

(b) It shall be the purpose of the council to effectuate the constitutional and statutory responsibilities conferred upon it by law, to further the improvement of the municipal courts and the administration of justice, to assist the judges of the municipal courts throughout the state in the execution of their duties, and to promote and assist in the training of such judges.

(c) Expenses of the administration of the council shall be paid from state funds appropriated for that purpose, from federal funds available to the council for that purpose, or from private funds available to the council, and from other appropriate sources.

(d) The council through its officers may contract with a person or firm including any member of the council for the production of educational material and compensate said member for producing such material, provided that funds are available to the council at the time of execution of the contract or will be available at the time of the completion of the contract and provided that the terms of the contract are disclosed to the full council and made available to the general public and news media. At the request of the council, the Administrative Office of the Courts shall be authorized to act as the agent of the council for the purpose of supervising and implementing the contract.

(e) The Administrative Office of the Courts shall provide technical services to the council and shall assist the council in complying with all its legal requirements.

(f) Notwithstanding any other law, a councilmember shall not be ineligible to hold the office of judge of a municipal court by virtue of his or her position as a member of the council and membership in the council shall not constitute the holding of a public office. (Code 1981, § 36-32-40, enacted by Ga. L. 1994, p. 1923, § 4; Ga. L. 2000, p. 136, § 36.)

CHAPTER 33

LIABILITY OF MUNICIPAL CORPORATIONS FOR ACTS OR OMISSIONS

Sec.
36-33-1. Immunity from liability for damages; waiver of immunity by purchase of liability insurance; liability for acts or omissions generally.
36-33-2. Liability for failure to perform discretionary act.
36-33-3. Liability for torts of police or other officers.
36-33-4. Personal liability of councilmembers and other municipal officers.
36-33-5. Written demand prerequisite to action for injury to person or property; time for presenting claim and for consideration by governing authority; suspension of limitations.
36-33-6. Exemption of municipal property from levy and sale.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Governmental Entity's Liability for Failure to Prevent Crime, 30 POF2d 429.

Negligent Vehicular Police Chase, 41 POF2d 79.

Police Misconduct as Municipal Policy or Custom, 13 POF3d 1.

Qualified Immunity Defense in Civil Rights Actions against Law Enforcement Officers, 59 POF3d 291.

ALR. — Liability of governmental unit for intentional assault by employee other than police officer, 17 ALR4th 881.

Liability of governmental unit for injuries caused by driver of third vehicle to person whose vehicle had been stopped by police car, 17 ALR4th 897.

Governmental liability for compensation or damages to advertiser arising from obstruction of public view of sign or billboard on account of growth of vegetation in public way, 21 ALR4th 1309.

Validity and construction of statute or ordinance limiting the kinds or amount of actual damages recoverable in tort action against governmental unit, 43 ALR4th 19.

Failure to restrain drunk driver as ground of liability of state or local government unit or officer, 48 ALR4th 320.

Liability to one struck by golf ball, 53 ALR4th 282.

Governmental tort liability as to highway median barriers, 58 ALR4th 559.

Governmental tort liability for injury to roller skater allegedly caused by sidewalk or street defects, 58 ALR4th 1197.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 ALR4th 260.

Legal aspects of speed bumps, 60 ALR4th 1249.

State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 ALR4th 204.

36-33-1. Immunity from liability for damages; waiver of immunity by purchase of liability insurance; liability for acts or omissions generally.

(a) Pursuant to Article IX, Section II, Paragraph IX of the Constitution of the State of Georgia, the General Assembly, except as provided in this Code section and in Chapter 92 of this title, declares it is the public policy of the State of Georgia that there is no waiver of the

sovereign immunity of municipal corporations of the state and such municipal corporations shall be immune from liability for damages. A municipal corporation shall not waive its immunity by the purchase of liability insurance, except as provided in Code Section 33-24-51 or 36-92-2, or unless the policy of insurance issued covers an occurrence for which the defense of sovereign immunity is available, and then only to the extent of the limits of such insurance policy. This subsection shall not be construed to affect any litigation pending on July 1, 1986.

(b) Municipal corporations shall not be liable for failure to perform or for errors in performing their legislative or judicial powers. For neglect to perform or improper or unskillful performance of their ministerial duties, they shall be liable. (Civil Code 1895, § 748; Civil Code 1910, § 897; Code 1933, § 69-301; Ga. L. 1986, p. 1312, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 2002, p. 579, § 2.)

History of Code section. — This Code section is derived from the decisions in Rivers v. City Council, 65 Ga. 376 (1880) and Collins v. Mayor of Macon, 69 Ga. 542 (1882).

Cross references. — Liability of municipalities for defects in public roads, § 32-4-93. Limited waiver of governmental immunity by purchase of motor vehicle liability insurance, § 33-24-51.

Law reviews. — For article, "The Tort Liability of Municipalities in Georgia," see 17 Ga. B.J. 456 (1955). For article, "Actions for Wrongful Death in Georgia: Parts Three and Four," see 21 Ga. B.J. 339 (1959). For article surveying tort liability insurance in Georgia local government law, see 24 Mercer L. Rev. 651 (1973). For article, "Personal Liability of State Officials Under State and Federal Law," see 9 Ga. L. Rev. 821 (1975). For article discussing Georgia's practice of exposing municipalities to tort liability through the use of nuisance law, see 12 Ga. St. B.J. 11 (1975). For article discussing municipal tort liability and the defense of extraterritorial operation, see 12 Ga. L. Rev. 1 (1977). For article discussing sovereign immunity and the State Court of Claims, see 14 Ga. St. B.J. 152 (1978). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For article discussing origin and construction of municipal tort liability law in Georgia, see 14 Ga. L. Rev. 239 (1980). For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For article, "Georgia Local Government Tort Liability: the 'Crisis' Conundrum," see 2 Ga. St. U. L. Rev. 19 (1986). For article, "'Sue and Be Sued'" in Georgia Local Government Law: A Vignette of Vicissitudes", see 41 Mercer L. Rev. 13 (1989). For annual survey on law of torts, see 43 Mercer L. Rev. 395 (1991). For article, "Local Government Tort Liability: the Summer of '92," see 9 Ga. St. U. L. Rev. 405 (1993). For article, "Georgia's Public Duty Doctrine: The Supreme Court Held Hostage," see 51 Mercer L. Rev. 73 (1999). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of construction law, see 56 Mercer L. Rev. 109 (2004). For article, "Police Pursuits: A Comprehensive Look at the Broad Spectrum of Police Pursuit Liability and Law," see 57 Mercer L. Rev. 511 (2006). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For note discussing governmental immunity from tort liability in Georgia, see 5 Ga. St. B.J. 494 (1969). For note, "Adverse Possession of Municipal and County Property Held for Proprietary Purposes: The Unique Georgia Development," see 7 Ga. St. B.J. 482 (1971). For note analyzing sovereign immunity in this state and proposing implementation of a waiver scheme and creation of a court of claims, see 27 Emory L.J. 717 (1978). For note on the 2002 amendment of this section, see 19 Ga. St. U. L. Rev. 243 (2002).

For comment on City of Atlanta v. Hurley, 83 Ga. App. 879, 65 S.E.2d 44 (1951), see 3 Mercer L. Rev. 218 (1951). For comment criticizing City of Atlanta v. Hurley, see 14 Ga. B.J. 80 (1951). For comment on Caroway v. City of Atlanta, 85 Ga. App. 792, 70 S.E.2d 126 (1952), see 15 Ga. B.J. 79 (1952). For comment on Knowles v. Housing Auth., 212 Ga. 729, 95 S.E.2d 659 (1957), holding that the Act giving the housing authority unqualified power to sue and be sued under § 49-2-6 waived any immunity the authority otherwise might have claimed under the state's privilege of governmental immunity, see 20 Ga. B.J. 258 (1957). For comment on Ethridge v. Lavonia, 101 Ga. App. 190, 112 S.E.2d 822 (1960), see 23 Ga. B.J. 129 (1960). For comment on City of Atlanta v. Mapel, 121 Ga. App. 567, 174 S.E.2d 599 (1970), as to municipal corporation's negligence liability for injuries sustained at municipal golf courses, see 22 Mercer L. Rev. 608 (1971).

JUDICIAL DECISIONS

Analysis

General Consideration
Nonliability for Governmental Functions
Liability for Ministerial Functions
Nuisances
Officers and Employees
Parks and Recreation
Roads and Bridges
Sewers
Transportation
Other Duties

General Consideration

Legislature has unfortunately codified the doctrine of municipal immunity into statutory law to the extent that the judicial branch of government has been preempted from effectively destroying that which the judiciary created. City of Atlanta v. Mapel, 121 Ga. App. 567, 174 S.E.2d 599 (1970).

Violation of duty to act. — When the city knows or ought to know of a defect, in time to repair or give warning of the defect, the city is liable for injuries sustained because of the defect regardless of the defect's cause. City of Rome v. Brinkley, 54 Ga. App. 391, 187 S.E. 911 (1936).

If a municipality did not perform an act creating a dangerous condition, the failure of the municipality to rectify the dangerous condition must be in violation of a duty to act. Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224 (1978).

In action to recover overcharges for electricity, defendant-municipality has legal duty to disclose existence of more favorable demand meter rate. City of Commerce v. Duncan & Godfrey, Inc., 157 Ga. App. 337, 277 S.E.2d 266 (1981).

No distinction between negligent and intentional torts. — Former Code 1933, §§ 69-301 and 69-307 (see O.C.G.A. §§ 36-33-1 and 36-33-3) did not distinguish between torts of nonfeasance or misfeasance committed by negligence, and other torts committed corruptly, maliciously, willfully, or wantonly. Brown v. City of Union Point, 52 Ga. App. 212, 183 S.E. 78 (1935).

Applicability to federal actions. — State cannot impose conditions precedent to the right of a party to proceed under 42 U.S.C. § 1983. Williams v. Posey, 475 F. Supp. 133 (M.D. Ga. 1979).

Applicability to diversity actions. — In a diversity action against a Georgia city arising out of an accident in South Carolina involving a city garbage truck, even though the city would not be entitled to sovereign immunity under South Carolina law, immunity enjoyed by the city under Georgia law would be extended as a matter of comity. Davis v. City of Augusta, 942 F. Supp. 577 (S.D. Ga. 1996).

General Consideration (Cont'd)

Inapplicable when waiver of immunity undisputed. — O.C.G.A. § 36-33-1 does not create a duty on the part of cities to perform all acts properly and skillfully; the statute simply creates an exception from sovereign immunity for cities' negligence in proprietary or nongovernmental matters and did not apply in a case where defendants' waiver of sovereign immunity was undisputed. City of Buford v. Ward, 212 Ga. App. 752, 443 S.E.2d 279 (1994).

Effect of demand statute. — Before the enactment of former Code 1933, § 69-308 (see O.C.G.A. § 36-33-5), requiring a demand, the liability of every municipal corporation in Georgia, under former Code 1933, § 69-301 (see O.C.G.A. § 36-33-1), was unqualified and unconditional; by the enactment of the law requiring a demand this unqualified liability of each municipal corporation became conditional upon the demand required by the statute. City of Atlanta v. Hudgins, 193 Ga. 618, 19 S.E.2d 508 (1942).

Notice requirement. — Notice must be given to hold liable a municipality for negligent ministerial acts. Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

Establishment of waiver. — Sovereign immunity is not an affirmative defense that must be established by the party seeking its protection; waiver of immunity must be established by the party seeking to benefit from the waiver. City of Lawrenceville v. Macko, 211 Ga. App. 312, 439 S.E.2d 95 (1993), overruled on other grounds by Clive v. Gregory, 280 Ga. App. 836, 635 S.E.2d 188, 2006 Ga. App. LEXIS 880 (Ga. Ct. App. 2006).

Sovereign immunity waived only by legislative act. — Relying on the plain language of O.C.G.A. § 36-33-1(a), the Georgia Supreme Court concluded that sovereign immunity could be waived only by an act of the legislature and, therefore, the indemnification agreement between the city and a corporation was void as an ultra vires contract; however, the case was remanded to the federal district court for consideration of whether, pursuant to O.C.G.A. § 36-33-1(a), the city waived the city's sovereign immunity as to the corporation's cause of action by purchasing insurance. CSX Transp., Inc. v. City of Garden City, 355 F.3d 1295 (11th Cir. 2004).

Purchase of liability insurance no waiver of immunity. — Absent statutory authority limiting the application of the provisions of this chapter, the procurement of liability insurance by the city does not constitute a waiver of the defense of sovereign immunity insofar as this defense bars recovery for damages caused by the performance of a governmental function in a negligent manner. Winston v. City of Austell, 123 Ga. App. 183, 179 S.E.2d 665 (1971).

Evidence did not show that the city waived the city's governmental immunity by purchasing liability insurance; thus, the city had governmental immunity on the individual's claims against the city arising out of the police officer's arrest of the individual for criminal trespass. Reese v. City of Atlanta, 261 Ga. App. 761, 583 S.E.2d 584 (2003).

Waiver by purchase of liability insurance. — Even if spraying for mosquito eradication is a governmental function, if as provided for in Ga. L. 1960, p. 289, § 1 (see O.C.G.A. § 33-24-51), the city secures insurance to cover liability for damages arising by reason of ownership, maintenance, operation, or use of any motor vehicle by the municipal corporation, under the municipality's management, control or supervision, whether in a governmental undertaking or not, the municipality's governmental immunity shall be waived to the extent of the amount of insurance so purchased. Mitchell v. City of St. Marys, 155 Ga. App. 642, 271 S.E.2d 895 (1980).

In a tort action for personal injuries and property damage arising from an auto collision filed against a city and the city's police officer, the trial court erred in granting a city summary judgment as: (1) O.C.G.A. § 40-6-6(d)(2) did not apply; and (2) the city waived the city's sovereign immunity to the extent that the city purchased liability coverage to cover the officer's actions in operating that officer's police car. But, the trial court properly granted summary judgment to the officer, given that the officer was engaged in a

discretionary function of responding to an emergency situation at the time the accident at issue occurred. Weaver v. City of Statesboro, 288 Ga. App. 32, 653 S.E.2d 765 (2007), cert. denied, 2008 Ga. LEXIS 221 (Ga. 2008).

In a negligence action against a city by plaintiffs injured in a collision with an on-duty police officer, the city's purchase of a general liability insurance policy covering claims in excess of $250,000 waived the city's sovereign immunity to the limits of the policy; since the city did not have a self-insurance plan, participate in any sort of insurance fund or pool, or set aside funds for the payment of liability claims, plaintiffs could recover only damages exceeding the $250,000 threshold. McLemore v. City Council, 212 Ga. 862, 443 S.E.2d 505 (1994).

City was not entitled to sovereign immunity because the city's "Public Officials Errors and Omissions" insurance policy covered the wrongful termination claims brought by city employees; therefore, consistent with O.C.G.A. § 36-33-1(a), the city was deemed to have waived sovereign immunity to the extent of the limits of the city's insurance policy covering those claims. Owens v. City of Greenville, 290 Ga. 557, 722 S.E.2d 755 (2012).

Insufficient proof of liability insurance. — Because there was no evidence of record that a city maintained liability insurance that would cover the occurrences forming the basis of the developers' claims, there was no waiver of the city's sovereign immunity pursuant to O.C.G.A. § 36-33-1(a); thus, sovereign immunity was a viable defense as to the city and the city officials acting in their official capacities. Wendelken v. JENK LLC, 291 Ga. App. 30, 661 S.E.2d 152 (2008).

Although in the developers' supplemental briefs, developers attached a copy of a general coverage declarations page, this was not part of the record below and could not be considered on appeal; thus, there was no evidence of record that a city maintained liability insurance that would cover the occurrences forming the basis of the developers' claims against the city and the city's officials. Accordingly, sovereign immunity was a defense as to the city and the individual defendants acting in their official capacities. Paul Wendelken v. Jenk, No. A07A1645; No. A07A1646, 2008 Ga. App. LEXIS 489 (Mar. 18, 2008).

Charter provision constitutional. — A 1983 amendment to the charter of the consolidated local government of Columbus which provided that the tort liability of the consolidated government would be the tort liability applicable to counties was valid and constitutional. Bowen v. City of Columbus, 256 Ga. 462, 349 S.E.2d 740 (1986).

Waiver by municipality. — According to the Georgia Supreme Court, Georgia municipalities may never waive a municipality's sovereign immunity by, for example, contracting to indemnify third parties without either express legislative authority or satisfying the requirements of O.C.G.A. § 36-33-1(a). CSX Transp., Inc. v. City of Garden City, 355 F.3d 1295 (11th Cir. 2004).

Unified city/county government was not a municipality for purposes of the waiver of sovereign immunity by operation of O.C.G.A. § 36-33-1 because the charter creating the unified government expressly provided that the government's tort and nuisance liability would follow the law and rules of tort liability applicable to counties in Georgia. Athens-Clarke County v. Torres, 246 Ga. App. 215, 540 S.E.2d 225 (2000).

No immunity for breach of contract. — Municipal immunity is not a valid defense to an action for breach of contract. Precise v. City of Rossville, 261 Ga. 210, 403 S.E.2d 47 (1991).

Insufficient proof of insurance. — Resident who brought a negligence and nuisance suit against a city had not shown that the city waived sovereign immunity under O.C.G.A. § 36-33-1 because a letter from a firm stating that the firm administered the city's insurance program did not suffice to show that the city had insurance. Gilbert v. City of Jackson, 287 Ga. App. 326, 651 S.E.2d 461 (2007).

Liability for contract and non-sovereign immunity torts. — Contract that included indemnification provision was void because a city could not waive the city's sovereign immunity under O.C.G.A. § 36-33-1; although it was not clear whether the city could waive

General Consideration (Cont'd)

non-sovereign immunity torts and contract claims, because a train track and train owner confined itself to a sovereign immunity tort recovery theory while proceeding on only a contract claim without seeking leave to amend under Fed. R. Civ. P. 15(a), the plaintiffs' entire case against the city failed as a matter of law. CSX Transp., Inc. v. City of Garden City, 418 F. Supp. 2d 1366 (S.D. Ga. 2006), aff'd, 258 Fed. Appx. 287 (11th Cir. 2007).

Cited in Newton v. City of Moultrie, 39 Ga. App. 702, 148 S.E. 299 (1929); Ware County v. Cason, 189 Ga. 78, 5 S.E.2d 339 (1939); Hammock v. City Council, 83 Ga. App. 217, 63 S.E.2d 290 (1951); Rhodes v. Perlis, 83 Ga. App. 312, 63 S.E.2d 457 (1951); Caroway v. City of Atlanta, 85 Ga. App. 792, 70 S.E.2d 126 (1952); Hunter v. City of Atlanta, 212 Ga. 179, 91 S.E.2d 338 (1956); Poole v. City of Louisville, 107 Ga. App. 305, 130 S.E.2d 157 (1963); Mitchell v. City of Newnan, 125 Ga. App. 761, 188 S.E.2d 917 (1972); City of Hawkinsville v. Wilson & Wilson, Inc., 231 Ga. 110, 200 S.E.2d 262 (1973); Mason v. Town of Berlin, 128 Ga. App. 177, 196 S.E.2d 181 (1973); Morin v. City of Valdosta, 140 Ga. App. 361, 231 S.E.2d 133 (1976); City of Atlanta v. Fry, 148 Ga. App. 269, 251 S.E.2d 90 (1978); Barnett v. City of Albany, 149 Ga. App. 331, 254 S.E.2d 481 (1979); Martin v. City of Atlanta, 155 Ga. App. 628, 271 S.E.2d 882 (1980); DeWaters v. City of Atlanta, 169 Ga. App. 41, 311 S.E.2d 232 (1983); Corey Outdoor Adv., Inc. v. Board of Zoning Adjustments, 254 Ga. 221, 327 S.E.2d 178 (1985); Sinkfield v. Pike, 201 Ga. App. 652, 411 S.E.2d 889 (1991); Ellis v. City of Fairburn, 852 F. Supp. 1568 (N.D. Ga. 1994); Koehler v. City of Atlanta, 221 Ga. App. 534, 472 S.E.2d 91 (1996); CSX Transp., Inc. v. City of Garden City, 235 F.3d 1325 (11th Cir. 2000); Cameron v. Lang, 274 Ga. 122, 549 S.E.2d 341 (2001); City of Atlanta v. Heard, 252 Ga. App. 179, 555 S.E.2d 849 (2001); CSX Transp., Inc. v. City of Garden City, 391 F. Supp. 2d 1234 (S.D. Ga. 2005).

Nonliability for Governmental Functions

Policy of section. — Municipality performs governmental functions in the exercise of certain of the municipality's corporate powers, because such powers are exercised by the municipality for the benefit of the public generally, and in their exercise it represents and is an arm of the state, such as the municipality's exercise of powers pertaining to the public health and to the maintenance of charitable, penal, reformatory, and similar public institutions. However, when the municipality exercises only such powers and privileges as are peculiarly for the municipality's own benefit, or the benefit of the municipality's own citizens, or those of the municipality's immediate locality, the municipality is acting in a strictly corporate capacity. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186 (1934); Watkins v. City of Toccoa, 54 Ga. App. 8, 189 S.E. 270 (1936).

Judicial functions. — No action, in any form, can be maintained against a municipal corporation for an error in judgment when exercising judicial functions. 106 Forsyth Corp. v. Bishop, 362 F. Supp. 1389 (M.D. Ga. 1972), aff'd, 482 F.2d 280 (5th Cir. 1973), cert. denied, 422 U.S. 1044, 95 S. Ct. 2660, 45 L. Ed. 2d 696 (1975).

City was immune from liability under O.C.G.A. § 36-33-1(b) because the issuance of an arrest warrant was a judicial act performed by a judicial officer. Griffin v. City of Brunswick, 2005 U.S. Dist. LEXIS 34922 (S.D. Ga. Nov. 30, 2005).

Rule of nonliability while performing delegated duties. — When a municipality undertakes to perform for the state duties which the state itself might perform, but which have been delegated to the municipality, and in the exercise of such function a private citizen is injured by the negligence of servants while engaged in such work, no cause of action arises against the municipality. Mayor of Savannah v. Jordon, 142 Ga. 409, 83 S.E. 109 (1914).

Rule of nonliability generally. — For acts done in the illegal performance of purely governmental functions, that is for failure to perform or errors in performing the government's legislative or judicial powers, as distinguished from neglect to perform or improper or unskillful performance of the government's ministerial duties, however illegally the authority may be exercised, a municipality is not liable. Brown v. City of Union Point, 52 Ga. App. 212, 183 S.E. 78 (1935); Foster v. Mayor of Savannah, 77 Ga. App. 346, 48 S.E.2d 686 (1948); City of Thomson v. Davis, 92 Ga. App. 216, 88 S.E.2d 300 (1955); Bagwell v. City of Gainesville, 106 Ga. App. 367, 126 S.E.2d 906 (1962); Turk v. City of Rome, 133 Ga. App. 886, 212 S.E.2d 459, aff'd, 235 Ga. 223, 219 S.E.2d 97 (1975).

Municipalities are not legally compellable or liable to pay claims arising by reason of negligence in the performance of the municipalities' governmental functions unless the legislature has delegated to the municipalities the power and authority to waive immunity from suit on claims arising because of negligence in the performance of such governmental functions. Koehler v. Massell, 229 Ga. 359, 191 S.E.2d 830 (1972).

When a homeowner claimed that the negligent repair of a sewer system caused a water main near a house to rupture, damaging the owner's home, the owner could not hold the city liable for the damage because the maintenance and repair of a sewer system was a governmental function, and, under O.C.G.A. § 36-33-1(a), the city could not be held liable for negligent acts of the city's employee in the performance of purely governmental functions. Goode v. City of Atlanta, 274 Ga. App. 233, 617 S.E.2d 210 (2005).

Distinction between governmental and ministerial duties. — Between a municipality and the public, the question of liability depends on whether at the time of the injury sued for the municipality was engaged in a governmental or ministerial duty. Roberts v. Mayor of Savannah, 54 Ga. App. 375, 188 S.E. 39 (1936).

When duty is of purely public nature, intended for benefit of public at large, without pretense of private gain to the municipality, no liability will attach. Cornelisen v. City of Atlanta, 146 Ga. 416, 91 S.E. 415 (1917); Harrison Co. v. City of Atlanta, 26 Ga. App. 727, 107 S.E. 83 (1921).

Applicability to negligence of driver of garbage cart for board of health. Love v. City of Atlanta, 95 Ga. 129, 22 S.E. 29 (1894).

Applicability to negligence of driver of ambulance for city hospital. Watson v. City of Atlanta, 136 Ga. 370, 71 S.E. 664 (1911).

Applicability to negligence of firefighter. Rogers v. City of Atlanta, 143 Ga. 153, 84 S.E. 555 (1915).

Acts of mayor in fixing bond. — Municipal corporation is not liable for the act of the mayor in requiring the plaintiff to give a larger bond than the law authorized. In fixing the amount of the bond, the mayor acted in a judicial capacity, and for an error committed in the exercise of judicial authority a municipal corporation is not liable. Gray v. Mayor of Griffin, 111 Ga. 361, 36 S.E. 792 (1900).

Traffic signals. — Trial court properly granted summary judgment to a city on a parent's negligence claim against the city stemming from a child's serious automobile accident at a known dangerous intersection that was inappropriately signaled because the city was immune from suit as the issue of whether to install a traffic signal at the intersection was a discretionary act, entitling the city to sovereign immunity; further, a successful tax referendum to fund a new traffic light did not create a duty to install a traffic light at the intersection before completing other projects. Riggins v. City of St. Marys, 264 Ga. App. 95, 589 S.E.2d 691 (2003).

Officer acting in official capacity applying sovereign immunity. — Trial court erred in denying a city and the city's police officers summary judgment as to an arrestee's claims against the city and the officers in the officers' official capacities because the claim against one of the officers in the officer's official capacity was, in reality, a suit against a governmental entity and subject to a claim of sovereign immunity, and no genuine issue of fact remained as to whether the city waived the city's sovereign immunity pursuant to

Nonliability for Governmental Functions (Cont'd)

O.C.G.A. § 33-24-51; the alleged negligence was unrelated to the use of a motor vehicle. Campbell v. Goode, 304 Ga. App. 47, 695 S.E.2d 44 (2010).

Liability for Ministerial Functions

Second sentence of subsection (b) waives immunity whenever a municipality undertakes a proprietary function. Miree v. United States, 526 F.2d 679 (5th Cir.), different results reached on rehearing, 538 F.2d 643 (5th Cir. 1976), judgment en banc vacated, 433 U.S. 25, 97 S. Ct. 2490, 53 L. Ed. 2d 557 (1977) (see O.C.G.A. § 36-33-1).

Corporate capacity defined. — When a municipality exercises only such powers and privileges as are peculiarly for the municipality's own benefit, or the benefit of the municipality's own citizens, or those of the municipality's immediate locality, the municipality is acting in a strictly corporate capacity. Watkins v. City of Toccoa, 54 Ga. App. 8, 189 S.E. 270 (1936).

Rule of liability generally. — Municipal corporation in the exercise of the municipality's corporate functions performs two classes of service: (1) governmental duties; and (2) private, corporate, or ministerial, duties. It seems well settled in this state that in the negligent performance of a municipality's governmental duties a municipal corporation is not liable in damages to one who is injured while the municipality is engaged in the performance of such duties. But a different rule obtains if in the exercise or neglect of the municipality's ministerial duties one is negligently injured by a municipal corporation. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186 (1934); Watkins v. City of Toccoa, 54 Ga. App. 8, 189 S.E.2d 270 (1936); Taylor v. King, 104 Ga. App. 589, 122 S.E.2d 265 (1961); Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

Municipality is immune from suit for acts the municipality performs which are authorized by law and executed in accordance with the judgment or conclusion reached by the municipal authority in the exercise of a governmental function. However, a municipality is liable when there is negligence or error in the execution of plans or specifications, adopted or prescribed by a municipality, that is, for negligence or error in the exercise of a ministerial duty, a municipal government is not liable for negligence in the exercise of a governmental function. Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224 (1978).

Payment of salary to government employees is a perfunctory administrative duty not included under the category of government functions and is not barred by any statutory immunity. Smith v. City of Atlanta, 167 Ga. App. 458, 306 S.E.2d 720 (1983).

To bar a municipal employee from recovering pay for services the employee performed by allowing the municipality to claim statutory immunity would violate the prohibition against the impairment of a contract which is found in both the state and federal constitutions. Smith v. City of Atlanta, 167 Ga. App. 458, 306 S.E.2d 720 (1983).

Facility designed to maximize revenues. — Municipality may be liable for failure to safely maintain a public facility, even though the municipality is not expressly given the power to operate the facility primarily as a source of revenue, if the facility is in fact designed to "maximize" revenues rather than to be operated primarily for the general good of the public; the duty of proper maintenance would, in such a case, be ministerial. Cleghorn v. City of Albany, 184 Ga. App. 732, 362 S.E.2d 386, cert. denied, 184 Ga. App. 909, 362 S.E.2d 386 (1989).

When city maintained a market house the city is under a duty to keep the market house in a safe condition, the market house being property of the city and used for the city's revenues. The city's duty is ministerial and the city is liable for injuries sustained by the plaintiff by stepping through a hole in the floor. Mayor of Savannah v. Cullens, 38 Ga. 334 (1868).

Improvement of streets by city. — Defense of sovereign immunity was not available to the city, when the city's management of the project included hiring the contractor and placing the city's on-site

construction inspector on the property to actively oversee the construction work on a daily basis. Consequently, the city was performing a ministerial function in improving the streets and sidewalks. City of Atlanta v. Atlantic Realty Co., 205 Ga. App. 1, 421 S.E.2d 113 (1992).

Applicability to neglect of duty of city officer in maintaining waterworks. City Council v. Mackey, 113 Ga. 64, 38 S.E. 339 (1901).

Applicability to failure of duty of officer in maintaining city electric light wires and plant. Sedlmeyr v. City of Fitzgerald, 140 Ga. 614, 79 S.E. 469 (1913).

Operation of stone quarry. — Operation by the city of a stone quarry which the city owns is purely ministerial. City Council v. Owens, 111 Ga. 464, 36 S.E. 830 (1900).

Payment to a corporation for work performed under a written contract with a city is a ministerial duty not included under the category of government functions and not barred by any statutory immunity. McCrary Eng'g Corp. v. City of Bowdon, 170 Ga. App. 462, 317 S.E.2d 308 (1984).

Nuisances

Liability for personal injury from continuing nuisance. — A line of cases hold municipalities liable for personal injuries resulting from a continuing nuisance despite this section must be read to be a common-law exception to the general statutory rule that municipalities are immune. Miree v. United States, 526 F.2d 679 (5th Cir.), different results reached on rehearing, 538 F.2d 643 (5th Cir. 1976), judgment en banc vacated, 433 U.S. 25, 97 S. Ct. 2490, 53 L. Ed. 2d 557 (1977) (see O.C.G.A. § 36-33-1).

Rule of nonliability is not to be confused with nuisance. Cannon v. City of Macon, 81 Ga. App. 310, 58 S.E.2d 563 (1950), later appeal, 89 Ga. App. 484, 79 S.E.2d 816 (1954).

To be held liable for maintenance of a nuisance, a municipality must be chargeable with performing a continuous or regularly repetitious act, or creating a continuous or regularly repetitious condition which causes the hurt, inconvenience, or injury; the municipality must have knowledge or be chargeable with notice of the dangerous condition. Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224 (1978).

What is nuisance. — That which the law authorizes to be done, if done as the law authorizes, cannot be a nuisance. Thus, if the act is lawful in itself, the act becomes a nuisance only when conducted in an illegal manner to the hurt, inconvenience, or damage of another. Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224 (1978).

Negligence not essential ingredient in action against municipality — When a municipality in the exercise of the municipality's functions, both governmental and ministerial, creates a nuisance which is specially injurious to an individual, such individual may have a cause of action for damages, and negligence is not an essential ingredient of the action. Foster v. Mayor of Savannah, 77 Ga. App. 346, 48 S.E.2d 686 (1948); Ingram v. City of Acworth, 90 Ga. App. 719, 84 S.E.2d 99 (1954); City of Thomson v. Davis, 92 Ga. App. 216, 88 S.E.2d 300 (1955); Stanley v. City of Macon, 95 Ga. App. 108, 97 S.E.2d 330 (1957); Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224 (1978); Duffield v. DeKalb County, 242 Ga. 432, 249 S.E.2d 235 (1978); Leake v. City of Atlanta, 146 Ga. App. 57, 245 S.E.2d 338 (1978); Porter v. City of Gainesville, 147 Ga. App. 274, 248 S.E.2d 501 (1978); City of Columbus v. Myszka, 246 Ga. 571, 272 S.E.2d 302 (1980).

No right to create and maintain nuisance. — While municipal corporations do have certain sovereign governmental powers which cannot be superintended by the courts, in the exercise of such powers municipal corporations have no right to create and maintain a nuisance hurtful to private citizens. Cannon v. City of Macon, 81 Ga. App. 310, 58 S.E.2d 563 (1950), later appeal, 89 Ga. App. 484, 79 S.E.2d 816 (1954).

Training of police officers. — Plaintiff's claims against the city that training of the city's police in the operation of police cars created a nuisance failed as a one-time occurrence of a car collision was insufficient evidence to prove a specific

Nuisances (Cont'd)

failure or specific negligence in training. Banks v. Mayor of Savannah, 210 Ga. App. 62, 435 S.E.2d 68 (1993).

Municipality may be liable for trespass in execution of governmental function only if such trespass constitutes a nuisance or constitutes the taking or damaging of private property for public use without just and adequate compensation first being paid. City of Atlanta v. Minder, 83 Ga. App. 295, 63 S.E.2d 420 (1951).

Adjoining landowners. — Municipality, as owner of real estate, owes the same duties to the owners of neighboring lands, with respect to the use of the municipality's own, as are owed by a private owner of land, and hence a municipality is liable to other landowners when it makes such use of the municipality's land as to constitute a nuisance, regardless of whether the municipality is engaged in performing a governmental or private function. This rule is equally applicable whether the actual injury is personal or property damage. Stanley v. City of Macon, 95 Ga. App. 108, 97 S.E.2d 330 (1957).

Increased noise and odors. — Term property comprehends not only the thing possessed, but also, in strict legal parlance, means the rights of the owner in relation to land or a thing; the right of a person to possess, use, enjoy, and dispose of the land or thing, and the corresponding right to exclude others from the use. Therefore, no physical invasion damaging to the property need be shown, only an unlawful interference with the right of the owner to enjoy the owner's possession. Thus, increased noise and odors may result in an inverse condemnation of property by interfering with the use and enjoyment of land and endangering health. Duffield v. DeKalb County, 242 Ga. 432, 249 S.E.2d 235 (1978).

Overflowing water. — When a municipality, in constructing a public improvement, obstructs the natural flow of surface water so as to cause the water to pond upon the land of an abutting owner, and the city provides no means of outlet for such water, the city becomes liable to the property owner for any damages occasioned to the landowner's property thereby. If the ponding of such water on private property constitutes a nuisance, which the city fails to abate, the municipality may be held liable. City of Rome v. Brown, 54 Ga. App. 6, 186 S.E. 708 (1936), aff'd, 184 Ga. 34, 190 S.E. 787 (1937).

Sewage. — When the city knowingly allowed human sewage from the city's sewerage system to flow across appellee's property for many months, the case was one of nuisance for which the city was liable and not a case of discretionary nonfeasance. City of Columbus v. Myszka, 246 Ga. 571, 272 S.E.2d 302 (1980).

Failure to provide holding cell. — Mere failure to provide a holding cell at a police station is not a nuisance for which a municipality may be liable to one allegedly injured thereby. McDay v. City of Atlanta, 204 Ga. App. 621, 420 S.E.2d 75, cert. denied, 204 Ga. App. 922, 420 S.E.2d 75 (1992).

Municipality not liable for failure to abate nuisance. — As a general rule, the duty imposed upon municipalities to abate nuisances existing upon private property within the municipality's limits is a duty which is judicial in the municipality's nature, and for failure to perform this duty, or for errors in the performance of the duty, the municipality is not liable in damages. Mayor of Dalton v. Wilson, 118 Ga. 100, 44 S.E. 830 (1903).

When nuisance is in or near public street, the municipality is liable to one who suffers special damage from the failure of the city to abate such nuisance. Parker v. Mayor of Macon, 39 Ga. 725 (1869); Mayor of Dalton v. Wilson, 118 Ga. 100, 44 S.E. 830 (1903).

Officers and Employees

This section should be construed together in connection with the section's cognate sections, and as intending to declare that municipal liability should attach only for neglect to perform, or for improper or unskillful performance of "ministerial duties." This construction would leave intact the common-law doctrine, frequently applied in this state before and since adoption of the Code, of nonliability for conduct of officers, agents, and servants of municipal corporations in respect to duties devolving upon the offi-

cers, agents, and servants in virtue of the sovereign or governmental functions of the municipality. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186 (1934) (see O.C.G.A. § 36-33-1).

Rule of nonliability for governmental functions. — When an injury sustained is inflicted because of the misfeasance of an agent of a corporation while engaged in the exercise of what are termed "governmental functions of a corporation," the city is not liable. When injuries are inflicted by the agent of a corporation acting for the corporation in the discharge of a duty when the corporation is engaged in the exercise of some private franchise, or some franchise conferred upon the corporation by law which the corporation may exercise for the private profit or convenience of the corporation or for the convenience of the corporation's citizens alone, in which the general public has no interest, a right of recovery lies against the city. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186 (1934); Roberts v. Mayor of Savannah, 54 Ga. App. 375, 188 S.E. 39 (1936); City of Atlanta v. Garner, 56 Ga. App. 435, 192 S.E. 841 (1937); Banks v. City of Albany, 83 Ga. App. 640, 64 S.E.2d 93 (1951).

Police pursuit of stolen vehicle. — Summary judgment for city on ground of sovereign immunity was proper in case of decedent who was killed when struck by a stolen car which was being chased by city police officers since the death did not arise from the use, maintenance, or operation of the city's motor vehicle but was due to the negligence or wilful misconduct of a fleeing felon in running a red light. Peeples v. City of Atlanta, 189 Ga. App. 888, 377 S.E.2d 889 (1989).

Liability for acts of officers contrary to law. — When an act is done by the officers and agents of a municipal corporation, which is within the corporate power and might have been lawfully accomplished had the municipal authorities proceeded according to law, the corporation will be liable for the consequences of an act of such officers or agents proceeding contrary to law or in an irregular manner. It is otherwise when the act complained of lies wholly outside of the general or special powers of the corporation. Langley v. City Council, 118 Ga. 590, 45 S.E. 486 (1903); McDonald v. Butler, 10 Ga. App. 845, 74 S.E. 573 (1912).

Failure to provide police protection. — When failure to provide police protection is alleged, there can be no liability based on a municipality's duty to protect the general public. However, when there is a special relationship between the individual and the municipality which sets the individual apart from the general public and engenders a special duty owed to that individual, the municipality may be subject to liability for the nonfeasance of the municipality's police department. City of Rome v. Jordan, 263 Ga. 26, 426 S.E.2d 861 (1993).

Deputy sheriff was not liable to the widow of a motorist killed in a collision with a drunk driver whom the deputy had failed to arrest or otherwise restrain from driving; although the deputy may have been present at the scene of the crime in that the deputy observed an intoxicated driver, the deputy's duty to enforce drunk driving laws was to the public in general, not specifically to the motorist who was killed hours later in a collision with the intoxicated driver at another location. Landis v. Rockdale County, 212 Ga. App. 700, 445 S.E.2d 264 (1994).

Arrest. — In an action arising out of an arrest, despite the way the arrestee was treated, the trial court properly dismissed a complaint against a county and granted summary judgment on the same complaint against a city on sovereign immunity grounds since the arrestee failed to show that the immunity had been waived. Scott v. City of Valdosta, 280 Ga. App. 481, 634 S.E.2d 472 (2006).

In an arrestee's state law claims, a city was not liable for actions of the city's police officers because the officers engaged in protected ministerial functions. Lavassani v. City of Canton, 760 F. Supp. 2d 1346 (N.D. Ga. Aug. 20, 2010).

Municipalities are liable for the acts of the municipalities' officers, agents, and servants only: (a) in the performance of any function if a statute specifically provides for such liability; (b) for neglect to perform, or improper or unskillful performance of ministerial duties; (c) for the performance of governmen-

Officers and Employees (Cont'd)

tal functions when the function amounts to the taking or damaging of private property for public purposes without first making adequate compensation therefor, or the creation of a nuisance dangerous to the life and health of persons because of its proximity to people in the enjoyment of their property. Stubbs v. City of Macon, 78 Ga. App. 237, 50 S.E.2d 866 (1948).

Employee's personal liability. — Government employee who commits a wrongful or tortious act violates a duty the employee owes to the one who is injured and is personally liable, even though the municipal employer may be exempt from liability under the doctrine of governmental immunity. Foster v. Crowder, 117 Ga. App. 568, 161 S.E.2d 364 (1968).

Trespass of officers. — Municipal corporation is not liable in damages for a trespass committed by the municipality's officers in wrongfully disinterring and removing the remains of a person buried in a cemetery owned and controlled by the city, unless the act was performed in pursuance of and to effectuate some corporate power conferred by the municipal charter. McDonald v. Butler, 10 Ga. App. 845, 74 S.E. 573 (1912).

Government immune from liability based on officer's actions. — Doctrine of governmental immunity protected the city from liability for the actions of the city's employees, including the police officer who arrested the individual for criminal trespass in the discharge of the officer's lawful duties, and, thus, the city was protected by that immunity from the arrested individual's claims against the city. Reese v. City of Atlanta, 261 Ga. App. 761, 583 S.E.2d 584 (2003).

Notice of change of group health insurance carrier. — City's duty to give reasonable notice to government employees that the city intended to change group health insurance carriers was a perfunctory administrative duty not included under the category of government functions and not barred by any statutory immunity. City of Brunswick v. Carney, 187 Ga. App. 634, 371 S.E.2d 201, cert. denied, 187 Ga. App. 907, 370 S.E.2d 194 (1988).

Summary judgment based on sovereign immunity improper. — Trial court erred in granting a police officer and a city summary judgment on the ground that the officer was performing a discretionary duty and the city was protected by sovereign immunity in an arrestee's action to recover damages for injuries sustained when the officer ran over the arrestee's foot with a patrol car during the arrest. A jury could find that the officer did not act intentionally, but rather, negligently came too close to the arrestee. Moreover, there was an issue of fact on whether the arrestee assumed the risk of injury when the arrestee had not threatened the officer with deadly force. Davis v. Batchelor, 300 Ga. App. 662, 686 S.E.2d 314 (2009).

Parks and Recreation

Park as governmental function. — When a city maintains a park primarily for the use of the public, intended as a place of resort for pleasure and promotion of health of the public at large, the city's operation is by virtue of the governmental powers of the municipality, and no municipal liability would attach to the nonperformance or improper performance of the duties of the officers, agents, or servants of the city in respect to keeping the park safe for use by members of the general public. Cornelisen v. City of Atlanta, 146 Ga. 416, 91 S.E. 415 (1917); Harvey v. Mayor of Savannah, 59 Ga. App. 12, 199 S.E. 653 (1938); Porter v. City of Gainesville, 147 Ga. 274, 248 S.E.2d 501 (1978); City Council v. Lee, 153 Ga. App. 94, 264 S.E.2d 683 (1980).

In the absence of charter authority to the contrary, the maintenance of a park by a municipality is a governmental function, and the municipality is not liable for the nonperformance or improper performance of the municipality's officers, agents, or servants in connection therewith. Stubbs v. City of Macon, 78 Ga. App. 237, 50 S.E.2d 866 (1948).

Parks distinguished from streets. — Legislative act placing city squares under the exclusive control and management of the park and tree commission of the city as to "all matters and things relating to the care, preservation, improvement, good order, and regulation generally" of the

squares, fixed their status as parks, the control and management of which were in the exercise of a government function. Consequently, no liability attached to the city when, as alleged in the petition in the present case, the plaintiff was injured on a sidewalk in a square because of the alleged negligence of the city in the city's maintenance thereof, and the court properly sustained the general demurrer (now motion to dismiss) to the petition. Harvey v. Mayor of Savannah, 59 Ga. App. 12, 199 S.E. 653 (1938).

Operation of public recreational swimming facilities, primarily for public benefit rather than for revenue production, is a governmental function, so cities are shielded from negligence claims by the doctrine of governmental immunity. Robinson v. City of Decatur, 253 Ga. 779, 325 S.E.2d 752 (1985), cert. denied and appeal dismissed, 484 U.S. 998, 108 S. Ct. 685, 98 L. Ed. 2d 638 (1988); Gooden v. City of Atlanta, 242 Ga. App. 786, 531 S.E.2d 364 (2000).

Auditorium as governmental function. — Municipality is not liable to one injured by the negligence of the municipality's employees in the operation of a city auditorium, when, at the time of the injury, the municipality, through the municipality's governing officials had permitted the use of the auditorium for public purposes and discussion of matters connected with rehabilitation loans to be made by the federal government, in that the city was engaged in the exercise of a purely governmental function in the maintenance and operation of the auditorium. The fact that the auditorium might be used for profit on other occasions would not render the city liable to one injured at the time the auditorium was being used strictly for governmental purposes. Roberts v. Mayor of Savannah, 54 Ga. App. 375, 188 S.E. 39 (1936).

When it is alleged that in operating a city auditorium the municipal corporation derived profit by renting or leasing the auditorium from time to time for private purposes, in the absence of an allegation that the city had charter authority to rent or lease such public building primarily as a source of revenue, no liability attaches to the city when one is injured because of the negligence of the city's agents while at work in repairing such building. City of Atlanta v. Garner, 56 Ga. App. 435, 192 S.E. 841 (1937); Granat v. Mayor of Savannah, 59 Ga. App. 276, 200 S.E. 311 (1938).

Golf course. — City has governmental immunity from tort liability in the operation of a golf course. City of Atlanta v. Mapel, 121 Ga. App. 567, 174 S.E.2d 599 (1970).

Paving of a walkway along the outer edge of a city park, but within the park, by the municipality in connection with the installation of automobile parking meters so as to leave a water meter projecting above the surface of the paved walkway in a manner dangerous to pedestrians using the walkway amounts to a governmental function in connection with the construction and maintenance of a city park. The fact that the area is also used in connection with parking meters providing revenue for the city does not make the function ministerial, this function also being governmental. Stubbs v. City of Macon, 78 Ga. App. 237, 50 S.E.2d 866 (1948).

Playground equipment. — Operation and maintenance of playground equipment so designed as to be dangerous to life or health is a nuisance for which an action against a municipality may be maintained. Porter v. City of Gainesville, 147 Ga. App. 274, 248 S.E.2d 501 (1978).

Public bathing beach. — Municipality is not liable for the negligent performance, or for the failure to perform the municipality's duty in the maintenance of a public bathing beach and appurtenances thereto, for whatever duty exists to maintain the beach and the beach's appurtenances is in virtue of the municipality's governmental powers and no municipal liability would attach on account of the municipality's negligent or unskillful performance of these duties. Tarver v. Savannah Beach, 96 Ga. App. 491, 100 S.E.2d 616 (1957).

Dog show in city auditorium. — Maintenance by the city of a dog show in the city auditorium, as would be the maintenance by the city of a menagerie in one of the city's public parks, or the maintenance of any other show for the pleasure

Parks and Recreation (Cont'd)

and entertainment of the public and not for pecuniary gain or profit, is the performance of a governmental power. Granat v. Mayor of Savannah, 59 Ga. App. 276, 200 S.E. 311 (1938).

Sufficiency of petition. — In a suit against a municipality for wrongful death of plaintiff's husband while hauling lumber for construction of dog kennels in aid of a dog show which was being put on by his employer in the city's auditorium, petition failed to allege under what conditions the dog show was being put on, whether the show was being put on or maintained by the authority of the city in the performance of the city's governmental function, or whether the city in transporting lumber was engaged in a purely ministerial duty; thus, the petition failed to set out a cause of action. Granat v. Mayor of Savannah, 59 Ga. App. 276, 200 S.E. 311 (1938).

Roads and Bridges

General rule of law is that municipal corporation is bound to keep the municipality's streets and sidewalks in reasonably safe condition for travel in ordinary modes, by night as well as by day; and if the municipality fails to do so the municipality is liable in damages for injuries sustained in consequence. City of Rome v. Brinkley, 54 Ga. App. 391, 187 S.E. 911 (1936); Mayor of Buford v. Medley, 58 Ga. App. 48, 197 S.E. 494 (1938); McKay v. City of Atlanta, 80 Ga. App. 797, 57 S.E.2d 432 (1950).

Duty to keep sidewalks safe. — Law places upon municipality duty of keeping sidewalks safe for travel in ordinary manner. Bailey v. Wohl Shoe Co., 128 Ga. App. 372, 196 S.E.2d 677 (1973).

If city has notice of dangerous defect in sidewalk, it is the city's duty to exercise ordinary care in remedying the sidewalk or in placing safeguard about the sidewalk. City of Rome v. Brinkley, 54 Ga. App. 391, 187 S.E. 911 (1936).

Actual notice unnecessary when defect of long duration. — When a defect in a street has existed for such a length of time that the city in the exercise of ordinary diligence ought to have discovered and remedied the defect, actual notice is unnecessary. Mayor of Buford v. Medley, 58 Ga. App. 48, 197 S.E. 494 (1938).

City is liable in damages for injuries sustained by the city's failure to act, and this is true regardless of the cause of the defect, if the city knew or should have known of the defect in time to repair the defect or give warning of the defect's existence. This notice may be presumed if the defect has existed for such length of time that by reasonable diligence in the performance of their duties the proper municipal authorities could have discovered the defect, and in such event proof of actual notice is unnecessary. McKay v. City of Atlanta, 80 Ga. App. 797, 57 S.E.2d 432 (1950).

Even though the defendant city would not be liable for failure to erect signs and a barricade at an intersection (the exercise of a governmental function as charged by the court), nevertheless, it would be liable for defects in the city's streets existing for a sufficient period of time so that in the exercise of ordinary care the municipal corporation should have reasonably become aware of the defect's existence. Columbus v. Preston, 155 Ga. App. 379, 270 S.E.2d 909 (1980).

Adoption by municipality of plan to grade streets a quasi-judicial act. — Adoption by a municipal corporation of a plan for grading the streets and sidewalks of a city is a quasi-judicial act, and if the plan adopted is erroneous, the city cannot be held liable to a private person who is injured thereby. If the execution of this plan — the construction of the pavement — is unskillful or negligent, the city is liable for the construction as a ministerial duty. Rogers v. City of Atlanta, 61 Ga. App. 444, 6 S.E.2d 144 (1939).

Laying out and construction of streets a governmental function. — While it is the duty of a city to keep the city's streets and sidewalks in a safe condition for travel in the ordinary modes, by night as well as by day, the laying out and construction of city streets is a governmental function, and a city will not be liable for an injury upon the theory merely that the city had constructed and was maintaining a dangerous intersection at a

place where one street entered at right angles without extending beyond another street. Lundy v. City Council, 51 Ga. App. 655, 181 S.E. 237 (1935).

Governmental immunity not in issue when defect in public road alleged. — When a bus passenger is injured when the passenger's arm, which is propped in an open bus window, is wedged between the bus window frame and a power pole installed by an electric company under a franchise agreement with a city, and the city asserts that the city granted the franchise in exercise of the city's legislative powers for which the city cannot be held liable under O.C.G.A. § 36-33-1, the city's claim of governmental immunity is not the issue; the issue instead is the liability of the city under O.C.G.A. § 32-4-93 for the alleged defect in a public road in the city's municipal street system. Kicklighter v. Savannah Transit Auth., 167 Ga. App. 528, 307 S.E.2d 47 (1983).

Deciding whether to erect traffic control sign or to maintain the sign after installation is an exercise of a governmental function by a municipality and it is not liable for any negligent performance of this function. Christensen v. Floyd County, 158 Ga. App. 274, 279 S.E.2d 723 (1981).

Operation and maintenance of traffic lights and other traffic control devices is a governmental function conducted on behalf of the public safety and for the negligent performance of which municipal corporations are not liable. Such functions are not related to maintenance of the streets as such, and liability of a municipality for the negligent failure to maintain a stop sign after the sign is once erected cannot be predicated on the theory that it is a part of street maintenance. Arthur v. City of Albany, 98 Ga. App. 746, 106 S.E.2d 347 (1958); Cyr v. Mayor of Savannah, 188 Ga. App. 261, 372 S.E.2d 659 (1988).

Operation of a traffic light conducted on behalf of the public safety is a governmental function for the negligent performance of which the city is not liable. City of Rome v. Potts, 45 Ga. App. 406, 165 S.E. 131 (1932).

Stop sign. — Driver's allegations of negligence against a city for negligent maintenance of a stop sign, which was allegedly obscured by foliage, were subject to summary judgment based on the city's sovereign immunity pursuant to O.C.G.A. § 36-33-1(b). The driver's nuisance claim was barred because the driver failed to show the city's awareness of a problem with the stop sign. Albertson v. City of Jesup, 312 Ga. App. 246, 718 S.E.2d 4 (2011), cert. denied, 2012 Ga. LEXIS 245 (Ga. 2012).

Placement of utility pole near roadway. — City and electrical membership corporation carried the city's and corporation's burden of showing that a driver's own negligence was the sole proximate cause of the driver's collision with a utility pole located more than nine feet from the roadway; therefore, summary judgment for the city and corporation was proper. Kecskes v. City of Mt. Zion, 300 Ga. App. 348, 685 S.E.2d 329 (2009).

Setting speed limit. — Governing body of municipality, which set the speed limit challenged by an accident victim, could not be held liable for any error in judgment that body may have made in so doing. Reid v. City of Hogansville, 202 Ga. App. 131, 413 S.E.2d 457 (1991).

Cleaning of streets and removal of garbage therefrom and from residences abutting on streets and sidewalks are governmental functions in the performance of which the municipality incurs no liability for the acts of the municipality's officers and employees. City of Brunswick v. Volpain, 67 Ga. App. 654, 21 S.E.2d 442 (1942).

Removal of debris from streets — City is in exercise of governmental function in removing "sweepings" from streets for the reason that such act is conducive to the good health of the community and the public at large. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186 (1934).

Operation of toll bridge is ministerial function. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186 (1934).

Fire hose lying on street part of performance of governmental function. — When city's fire department was engaged in extinguishing a fire when plaintiff motorcyclist was injured by running into a fire hose lying on the street, the employees and agents of the defen-

Roads and Bridges (Cont'd)

dant city were engaged in a governmental function to the extent that the defendant is not liable in damages for the fire department's negligent acts. Clay v. City of Rome, 74 Ga. App. 754, 41 S.E.2d 337 (1947).

Inconsistent charter provision of no use as defense. — Insofar as charter provisions relieved a city from liability for negligence in the maintenance of the city's streets, such provision was inconsistent with general law of force and effect in the state, and the inhibition contained in the state Constitution against the passage of special laws in conflict with existing general law precluded raising of such charter provisions as a defense to personal injury action against the city. City of Macon v. Harrison, 98 Ga. App. 769, 106 S.E.2d 833 (1958).

Relief of abutting property owner from liability. — Placing of responsibility upon municipalities relieves an abutting property owner of liability unless the owner caused or actively participated in causing the obstruction or defect in the street or sidewalk. Reed v. Batson-Cook Co., 122 Ga. App. 803, 178 S.E.2d 728 (1970).

Defect is question for jury. — Whether a defect or hole in a city street was such as to give a right of action to a person injured thereby is ordinarily a question for the jury, since it is a complicated question of fact involving the depth of the hole or defect, the hole's appearance to travelers on the street, and the danger which might have been anticipated and guarded against by the city in the exercise of reasonable forethought. Mayor of Buford v. Medley, 58 Ga. App. 48, 197 S.E. 494 (1938).

Whether by the existence of a defect in a street or sidewalk such street or sidewalk was not in a reasonably safe condition, and whether the city knew or ought to have known of the defect in time to repair the defect, or give warning of the defect's existence, are ordinarily questions for determination by a jury. McKay v. City of Atlanta, 80 Ga. App. 797, 57 S.E.2d 432 (1950).

Sewers

Collection and disposition of sewerage is a governmental function, and there is accordingly no cause of action for the improper erection and maintenance of a sewer on the theory of negligence alone, because damage resulting from the exercise of a governmental function in a negligent manner would constitute damnum absque injuria. Ingram v. City of Acworth, 90 Ga. App. 719, 84 S.E.2d 99 (1954).

Sewers as governmental function. — Duties of municipal authorities in adopting a general plan of drainage, and in determining when, where, and of what size, and at what level drains or sewers shall be built, are of a quasi-judicial nature, involving the exercise of deliberate judgment and wide discretion; and the municipality is not liable for an error of judgment on the part of the authorities in locating or planning such improvements. City of Atlanta v. Trussell, 21 Ga. App. 340, 94 S.E. 649 (1917); Harrison Co. v. City of Atlanta, 26 Ga. App. 727, 107 S.E. 83 (1921); Rogers v. City of Atlanta, 61 Ga. App. 444, 6 S.E.2d 144 (1939).

Construction, installation, and maintenance of a sewer-drainage system (including that for surface water) is a governmental function. Foster v. Crowder, 117 Ga. App. 568, 161 S.E.2d 364 (1968); Turk v. City of Rome, 133 Ga. App. 886, 212 S.E.2d 459, aff'd, 235 Ga. 223, 219 S.E.2d 97 (1975); Pair Dev. Co. v. City of Atlanta, 144 Ga. App. 239, 240 S.E.2d 897 (1977); City of E. Point v. Terhune, 144 Ga. App. 865, 242 S.E.2d 728 (1978).

Construction and maintenance of sewers is a ministerial duty. Mayor of Savannah v. Spears, 66 Ga. 304 (1881); Smith v. City of Atlanta, 75 Ga. 110 (1885); City of Atlanta v. Trussell, 21 Ga. App. 340, 94 S.E. 649 (1917).

Nuisance theory liability. — Power to construct a system of sewers and drains does not authorize the municipal corporation to create a nuisance. In such a case the city cannot escape liability on the ground that the city is engaged in the performance of a governmental function. Cannon v. City of Macon, 81 Ga. App. 310, 58 S.E.2d 563 (1950), later appeal, 89 Ga.

App. 484, 79 S.E.2d 816 (1954); Ingram v. City of Acworth, 90 Ga. App. 719, 84 S.E.2d 99 (1954).

Even though the construction, installation, and maintenance of a sewer-drainage system, including that for surface water, is a governmental function, a municipal corporation can nevertheless be held liable with respect to these activities on the theory of nuisance and on the theory of taking or damaging for public purposes without just and adequate compensation being first paid. Turk v. City of Rome, 133 Ga. App. 886, 212 S.E.2d 459, aff'd, 235 Ga. 223, 219 S.E.2d 97 (1975).

Sufficiency of petition. — When the gist of the action was negligence and not nuisance, and the only act of negligence alleged in the petition was that the opening in the sewerage system of the city was too small, and the petition did not allege any negligent construction or negligent failure to keep in repair or maintain the sewer or the sewer's inlet, or negligence in allowing the sewer to become obstructed, this was merely alleging an error in the planning of a drainage system and that this act caused the injury. No actionable negligence was alleged, and the municipality was not liable for the judgment on the part of the authorities in locating or planning a general plan of drainage sewers for the city. Rogers v. City of Atlanta, 61 Ga. App. 444, 6 S.E.2d 144 (1939).

Transportation

Airport as park. — Airport of the City of Savannah, under the statutes (both local and general) authorizing the airport's establishment and maintenance, was a governmental institution in the nature of a "park," and the city was not liable in damages to a party sustaining personal injuries by reason of a dangerous defect in the pavement of a roadway inside the "park," notwithstanding receipt by the city of some incidental revenue from lessees or licensees of certain privileges therein, it not appearing that the airport was operated primarily as a source of revenue. Mayor of Savannah v. Lyons, 54 Ga. App. 661, 189 S.E. 63 (1936).

Operation of a municipal airport when portions are leased for "substantial revenue" is a ministerial or proprietary function of the city. Hence, a municipality is not immune from liability resulting from the municipality's negligence in the maintenance and operation thereof. Caroway v. City of Atlanta, 85 Ga. App. 792, 70 S.E.2d 126 (1952); Taylor v. King, 104 Ga. App. 589, 122 S.E.2d 265 (1961). For comment on Caroway v. City of Atlanta, see 5 Ga. St. B.J. 474 (1969).

Use of motor vehicles. — Governmental immunity from liability extends to the use of motor vehicles in connection with the performance or accomplishment of the governmental function. Foster v. Crowder, 117 Ga. App. 568, 161 S.E.2d 364 (1968).

Bus system. — In operating a system of buses for the transportation of passengers for hire, a city functions in a corporate, as distinguished from a governmental capacity, and may be held liable for injuries sustained through the negligent operation of a bus. Columbus v. Hadley, 130 Ga. App. 599, 203 S.E.2d 872 (1974).

City is liable as a common carrier with respect to passengers, and is required to exercise a high degree of care for passenger safety, not only while being transported, but also when entering the vehicle, or alighting therefrom. Columbus v. Hadley, 130 Ga. App. 599, 203 S.E.2d 872 (1974).

Need to prove negligence caused injury to passengers. — Recovery against the city will be denied if the evidence is insufficient to prove negligence on the part of a bus driver. Columbus v. Hadley, 130 Ga. App. 599, 203 S.E.2d 872 (1974).

Municipality is not an insurer of the safety of the municipality's passengers, and ordinarily is not liable for damages resulting from sudden stops, or jerks or jolts of the vehicle, nor for unusual conditions on streets or sidewalks, unless municipal negligence is established. As to persons other than passengers, such as pedestrians, or motorists, ordinary care is required in the operation of buses. Columbus v. Hadley, 130 Ga. App. 599, 203 S.E.2d 872 (1974).

Liability to police officer for defective motorcycle. — Defendant municipality is not liable for the negligence of the municipality's chief of police in failing to furnish a police officer with a good motor-

Transportation (Cont'd)

cycle since at the time of the injury the municipality was in the exercise of a governmental function. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186 (1934).

Other Duties

Preservation of public health is a governmental function and involves the removal of those causes which are calculated to produce disease. Mitchell v. City of St. Marys, 155 Ga. App. 642, 271 S.E.2d 895 (1980).

Violation by city of own ordinance. — Court did not err in charging that the violation by a city of the city's own ordinance calling for safety shut-off devices on gas appliances would constitute negligence per se since the city was engaged in supplying gas and had undertaken to convert customers' appliances to the use of propane. City of Albany v. Burt, 88 Ga. App. 144, 76 S.E.2d 413 (1953).

Wall abutting on or nearby a public street may be torn down by the municipality if the wall is dangerous to the public, but if this be done summarily, it is at the peril of the city. If the wall is not in fact dangerous, the city will be liable. McWilliams v. City of Rome, 142 Ga. 848, 83 S.E. 945 (1914).

Collection and transportation of garbage by a city employee is a governmental function. Boone v. City of Columbus, 87 Ga. App. 701, 75 S.E.2d 338 (1953).

Removal of garbage from residences, the transportation thereof to a point of disposal and the disposal, when performed by a municipality, or an agency thereof, is a governmental function in the performance of which a city incurs no liability for the negligent acts of the city's officers and employees. Ethridge v. City of Lavonia, 101 Ga. App. 190, 112 S.E.2d 822 (1960). For comment, see 23 Ga. B.J. 129 (1960).

Generally, removal of garbage and trash and other health and sanitation measures protecting the health and welfare of the public are considered governmental functions, but cleaning up the street in a "cleanup campaign" might include both health and sanitation, as well as maintaining streets and sidewalks to keep the streets and sidewalks safe for travel, which is a ministerial function. City of Atlanta v. Whatley, 161 Ga. App. 705, 289 S.E.2d 541 (1982).

When city admitted that the city was remunerated for sanitation and trash pick-up and could have used a portion of the revenues derived from such a source to finance in part other city operations, the pick-up activity may have become a quasi-public business, a ministerial function, by becoming a "source of revenue" instead of "a purely incidental profit." City of Atlanta v. Whatley, 161 Ga. App. 705, 289 S.E.2d 541 (1982).

Garbage as nuisance. — Although municipal authorities may have plenary power in the matter of collection, removal, and disposition of garbage, yet the municipal authorities cannot lawfully create, in connection therewith, a nuisance dangerous to health or life; and when such a nuisance is created, and the effect is specially injurious to an individual by reason of the nuisance's proximity to an individual's home, the individual has a cause of action for damages. City of Atlanta v. Due, 42 Ga. App. 797, 157 S.E. 256 (1931).

Housing authority created under statutory authorization was business enterprise, and hence municipality was liable in tort to tenant. Knowles v. Housing Auth., 212 Ga. 729, 95 S.E.2d 659 (1956). For comment, see 20 Ga. B.J. 258 (1957).

Wrongful refusal of bail. — City was not liable in damages because mayor, as judge of city's court for the trial of ordinance violations, wrongfully refused to allow bail to an alleged offender, and wrongfully directed a police officer to commit the offender to jail, where the offender was imprisoned until released by a habeas corpus proceeding, nor did the appearance of the mayor or an attorney for the municipality in resistance of the habeas corpus constitute a ratification by the municipality of these alleged illegal acts by the municipality's officers so as to render the municipality liable therefore. Brown v. City of Union Point, 52 Ga. App. 212, 183 S.E. 78 (1935).

City cemetery. — When none but those who pay for easements in

city-owned cemetery are permitted to use the cemetery as such (that is, those who buy lots therein), the sphere of the cemetery's operation is so contracted as to exclude the general public from the use of the cemetery for cemetery purposes, and thus, even if a few paupers are buried there without paying therefor, the city is engaged in the performance of a ministerial function and not a governmental function, and is liable for negligence in connection therewith. City of Atlanta v. Rich, 64 Ga. App. 193, 12 S.E.2d 436 (1940), distinguished, Mayor of Savannah v. Radford, 261 Ga. 129, 401 S.E.2d 709 (1991).

Wastepaper box. — Maintenance by a municipality of a large wastepaper wooden box as a receptacle for trash and wastepaper and the removal of the box's contents is an act by a municipality in the performance of the municipality's governmental functions. Mayor of Savannah v. Jones, 149 Ga. 139, 99 S.E. 294 (1919).

Uninsulated live wire. — In suit by telephone cable repairer, against telephone company and city, for injuries sustained by coming into contact with uninsulated live wire of city, strung in close proximity to pole of defendant telephone company, while repairing cable on that pole, the petition set out no cause of action where it appeared that the plaintiff could have avoided injury by the exercise of ordinary care. Elder v. City of Quitman, 56 Ga. App. 460, 193 S.E. 82 (1937).

Manufacture and installation of sanitary toilets by a municipality for the municipality's citizens is an act tending to promote the health and general welfare of the municipality's citizens, and is in its nature a governmental function. Watkins v. City of Toccoa, 55 Ga. App. 8, 189 S.E. 270 (1936).

When an airport security officer employed by the city had the powers of a police officer and fire fighter and was involved in an automobile accident while performing those duties, the city is immune from liability. City of Macon v. Powell, 133 Ga. App. 907, 213 S.E.2d 63 (1975).

Fire department. — Operation and maintenance of fire departments and apparatus therein is a governmental function of the municipality and, therefore, the municipality is not liable for negligence of the municipality's officers or agents incident to such function. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186 (1934); Banks v. City of Albany, 83 Ga. App. 640, 64 S.E.2d 93 (1951).

Injuries to fire fighter. — When a municipal corporation maintains a firehouse and on the second floor of the building maintains sleeping quarters for attending fire fighters, and when the municipality maintains in the building a pole extending from the fire fighter's quarters to the first floor which is used in responding to fire alarms, the municipality is engaged in the exercise of a governmental power in maintaining such pole and the floor on which the pole rests, and is not liable in damages to a fire fighter for injuries while using the pole for the purpose for which the pole was intended, on account of negligence in the maintenance of the pole and floor. Miller v. City of Macon, 152 Ga. 648, 110 S.E. 873 (1922).

Fact that a police officer was patrolling property operated by the municipality for private gain and profit would not affect the character of the police officer's act and the consequent liability of the city. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186 (1934).

Municipality not liable for negligence of leader of work gang when prisoner injured as a result. City of Atlanta v. Hurley, 83 Ga. App. 879, 65 S.E.2d 44 (1951). For comment, see 3 Mercer L. Rev. 218 (1951) and 14 Ga. B.J. 80 (1951).

Erection and maintenance of a city prison by a municipal corporation is a governmental function. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186 (1934).

In erecting and maintaining a city prison for a police station, a municipal corporation is exercising a purely governmental function and is, therefore, not liable in damages to a person arrested and imprisoned therein by the municipality's police officers for injuries sustained by the person while so confined by reason of the improper construction or negligent maintenance of such prison or station. McDay v. City of Atlanta, 204 Ga. App. 621, 420 S.E.2d 75, cert. denied, 204 Ga. App. 922, 420 S.E.2d 75 (1992).

Other Duties (Cont'd)

Maintenance of a jail by a municipality is a governmental function, and the municipality is not liable for injury to a prisoner resulting entirely from the negligent maintenance and keeping of the prison. Archer v. City of Austell, 68 Ga. App. 493, 23 S.E.2d 512 (1942).

Jail conditions. — Because a city was immune from suit in performing the governmental function of maintaining the city jail, it could not be concluded as a matter of law, in a federal civil rights action against the city and the city's police officers, alleging that the physical conditions in the jail deprived the defendant of due process, that "adequate state remedies" existed. Lambert v. McFarland, 612 F. Supp. 1252 (N.D. Ga. 1984).

Operation of a system of waterworks is not such a governmental function that a city is not liable for injuries resulting through negligence in the maintenance thereof. Huey v. City of Atlanta, 8 Ga. App. 597, 70 S.E. 71 (1911).

City maintenance of drainage culverts. — In a father's suit alleging that a city was negligent in maintenance of a drainage culvert in which the father's son drowned, the father's argument that the city waived the city's sovereign immunity under O.C.G.A. § 36-33-1(a) was treated as abandoned on the city's motion for summary judgment because the father did not address the city's sovereign immunity claim in the brief in opposition to the motion. Walden v. City of Hawkinsville, No. 5:03-CV-0398 (DF), 2005 U.S. Dist. LEXIS 21694 (M.D. Ga. Sept. 21, 2005).

City immune for operation of a fountain. — City was entitled to sovereign immunity under O.C.G.A. § 32-4-93 in a pedestrian's claim against the city for negligent maintenance of a fountain, which the pedestrian argued resulted in ice forming on a sidewalk where the pedestrian slipped and fell. The pedestrian failed to point to specific evidence of the city's actual or constructive notice of any defect in the fountain. Naraine v. City of Atlanta, 306 Ga. App. 561, 703 S.E.2d 31 (2010).

Operation of parking meters on the streets of a municipality with charter powers sufficiently broad to invest it with the general supervision and control over its street is a governmental function. Stubbs v. City of Macon, 78 Ga. App. 237, 50 S.E.2d 866 (1948).

Operation of electric power plant a ministerial function. — Under O.C.G.A. § 36-33-1, a municipal corporation is liable for improper performance of the municipality's ministerial duties, but not for errors in exercising the municipality's judicial or governmental powers, and the operation of an electric power plant for profit is a ministerial function. City of Douglas v. Johnson, 157 Ga. App. 618, 278 S.E.2d 160 (1981).

Licensing power. — When a municipal or other governmental body grants a license it is an adjudication that the applicant has satisfactorily complied with the prescribed standards for the award of that license. Similarly the denial of a license is based on an adjudication that the applicant has not satisfied those qualifications and requirements. On the other hand, the prescription of standards which must be met to obtain a license is legislation, since these standards are authoritative guides for future conduct derived from an assessment of the needs of the community. A governmental agency entrusted with the licensing power, therefore, functions as a legislature when the agency prescribes these standards, but the same agency acts as a judicial body when the agency makes a determination that a specific applicant has or has not satisfied the requirements. 106 Forsyth Corp. v. Bishop, 362 F. Supp. 1389 (M.D. Ga. 1972), aff'd, 482 F.2d 280 (5th Cir. 1973), cert. denied, 422 U.S. 1044, 95 S. Ct. 2660, 45 L. Ed. 2d 696 (1975).

Requirements of due process applicable to licensing power. — Since licensing consists in the determination of factual issues and the application of legal criteria to the licensing — a judicial act — the fundamental requirements of due process are applicable to it. 106 Forsyth Corp. v. Bishop, 362 F. Supp. 1389 (M.D. Ga. 1972), aff'd, 482 F.2d 280 (5th Cir. 1973), cert. denied, 422 U.S. 1044, 95 S. Ct. 2660, 45 L. Ed. 2d 696 (1975).

Waiver in 1983 pursuant to state constitution. — Despite the language

limiting O.C.G.A. § 36-33-1(a)'s effect to litigation pending after July 1, 1986, a municipality's defense of sovereign immunity is automatically waived to the extent of any applicable general liability insurance coverage carried by the municipality for actions filed as of the effective date in 1983 of Ga. Const., 1983, Art. I, Sec. II, Para. IX. Brockman v. Burnette, 184 Ga. App. 66, 360 S.E.2d 655 (1987).

When plaintiff failed to furnish an insurance policy which was allegedly purchased by the city, it could not have been determined whether the policy covered an occurrence for which the defense of sovereign immunity was available, and whether the city waived the city's immunity for any tort which may have been committed by one of the city's officers. Hancock v. Hobbs, 967 F.2d 462 (11th Cir. 1992).

Indemnification agreement with railroad. — When the city entered into agreements with the railroad to utilize a right-of-way for water and sewer lines, and an accident later subjected the railroad to damages, and claims by third parties, because nothing in O.C.G.A. § 36-33-1 could be construed to permit a municipality to waive its sovereign immunity by contracting to indemnify a third party, the indemnification agreement between the city and the railroad was void as an ultra vires contract. Under O.C.G.A. § 36-33-1(a), it was the purchase of insurance that effectuated the waiver of sovereign immunity; thus, it was irrelevant that the invalid indemnification agreement covered occurrences to which sovereign immunity both did and did not apply. CSX Transp., Inc. v. City of Garden City, 277 Ga. 248, 588 S.E.2d 688 (2003).

In an action by a rail corporation for indemnification resulting from a collision between a train and a truck operated by a city's construction contractor, the rail corporation could not use an insurance provision in a contract with the city permitting use of the railroad's right-of-way to bootstrap an unpleaded tort claim when, under O.C.G.A. § 36-33-1, the city had waived the city's sovereign immunity to the extent that the city had purchased liability insurance so that the indemnification provision had no effect and the railroads had abandoned the railroad's contract claim. CSX Transp., Inc. v. City of Garden City, No. 06-11805, 2007 U.S. App. LEXIS 28793 (11th Cir. Dec. 10, 2007) (Unpublished).

Indemnification contracts. — City was entitled to summary judgment on plaintiffs' contract claim against the city since the indemnification contract between the city and the plaintiffs was ultra vires. CSX Transp., Inc. v. Garden City, 196 F. Supp. 2d 1288 (S.D. Ga. 2002).

Surety sued a city after the cash bond the surety posted was forfeited. As the traffic court was operating in the court's judicial capacity when the court ordered the forfeiture of the bond, the court's actions were immune from liability under O.C.G.A. § 36-33-1(b). Watts v. City of Dillard, 294 Ga. App. 861, 670 S.E.2d 442 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Generally, counties have a broader immunity from suits than do municipalities. 1975 Op. Att'y Gen. No. 75-32.

Keeping of prisoners by a city is ordinarily a governmental function, and for simple negligence in such a function a city is not liable. 1973 Op. Att'y Gen. No. U73-25.

Municipality's potential liability for acts of a probationer working on a community service project will have to be determined from the facts in each case, which will show whether the injury is the result of a nuisance as defined in former Code 1933, § 72-101 (see O.C.G.A. § 41-1-1), or negligence as stated in former Code 1933, § 69-301 (see O.C.G.A. § 36-33-1). 1975 Op. Att'y Gen. No. 75-32.

School athletic activities. — Local school district is not liable in tort under the law of Georgia for injuries sustained by a pupil engaged in school athletic activities. 1957 Op. Att'y Gen. p. 100.

Board not liable for accident while transporting pupil to athletic event. — Use of a school bus for transporting a school band and school pupils of an independent school system to athletic contests

participated in by the schools of the district would be a governmental operation and a city board of education is not liable for an injury received by a pupil in a school bus accident. 1945-47 Op. Att'y Gen. p. 220.

RESEARCH REFERENCES

C.J.S. — 63 C.J.S., Municipal Corporations, § 882.

ALR. — Suit against railroad owned by or in which interest is held by United States or state, 8 ALR 995.

Liability of town or municipality for libel or slander, 9 ALR 351.

Liability of water or power company for interruption of pressure during progress of fire, 27 ALR 1273.

Statutory requirement of adequate service and facilities by public utility as affecting liability for loss of private property through inadequate supply of water to extinguish fire, 27 ALR 1279.

Liability of municipal corporation for tort of officer or employee of water department, 28 ALR 822; 54 ALR 1497.

Liability of municipal corporations for injuries due to conditions in parks, 29 ALR 863; 42 ALR 263; 99 ALR 686; 142 ALR 1340.

Commission and other modern forms of municipal government as affecting liability of municipality for torts, 30 ALR 473.

Liability of municipality for tort in construction or operation of municipally owned railroad or street railway, 31 ALR 1306.

Liability in respect of taxes derived from territory improperly annexed to municipal or political division, 35 ALR 477.

Validity of contract exempting municipality from liability for negligence, 41 ALR 1358.

Liability of municipality as affected by license issued by municipal officer, 42 ALR 1208.

Liability of municipality for damages or compensation for abating as a nuisance what is not in fact such, 46 ALR 362.

Liability of municipality in respect of municipal bathhouses, bathing beaches, and swimming pools, 51 ALR 370; 57 ALR 406.

Liability of municipality in consequence of its inability, refusal, or failure to collect the cost of local improvements from the property benefited, 51 ALR 973; 172 ALR 1030.

Liability of municipal corporations and their licensees for the torts of independent contractors, 52 ALR 1012.

Liability of municipality in damages for wrongful revocation of permit or license, 55 ALR 434.

Rule of municipal immunity from liability for torts pertaining to governmental functions as affected by constitutional guaranty of remedy for all injuries and wrongs, 57 ALR 419.

Rule of municipal immunity from liability for torts pertaining to exercise of governmental functions as available to municipal lessee or concessioner, 57 ALR 560.

Liability of county or municipality for tortious injury in or about building which is used for both governmental and proprietary functions, 64 ALR 1545.

Liability of municipality where sewer originally of ample size has become inadequate by growth or development of territory, 70 ALR 1347.

Liability of municipality for injury due to defective catch-basin covers, and the like, maintained in street in connection with drainage or sewer system, 71 ALR 753.

Res ipsa loquitur as applicable in action against municipality for injuries from dangerous condition in parks, streets, or highways, 74 ALR 1226.

Rule of municipal immunity from liability for acts in performance of governmental functions as applicable in case of personal injury or death as result of a nuisance, 75 ALR 1196; 56 ALR2d 1415.

Fire department as pertaining to the governmental or the proprietary branch of municipality, 84 ALR 514.

Constitutionality or validity of statute or ordinance requiring a bond to discharge liability for damage as a condition of use of, or operations on, real property, 86 ALR 803.

Applicability to federal courts of state constitutional or statutory provisions regarding liability of county or other political subdivision to suit, 86 ALR 1019.

Power of legislature to impose, or municipality to assume, liability for acts of officials or employees pertaining to governmental functions, 89 ALR 394.

Right to and remedy in respect of damages due to negligent or delayed prosecution of condemnation proceedings, 92 ALR 379.

Liability of municipality for injury by or incident to fireworks display, 93 ALR 1356.

Liability of municipal corporation for its own misfeasance or nonfeasance, as distinguished from misfeasance or nonfeasance of officer or employee, 102 ALR 656.

Power of city, town, or county or its officials to compromise claim, 105 ALR 170; 15 ALR2d 1359.

Liability of municipality because of misappropriation, diversion, or withholding of funds collected by or paid to it on account of special assessment against property for improvements, 107 ALR 1354.

When statute of limitation commences to run against an action based on breach of duty by recording officer, 110 ALR 1067.

Use of municipal automobile as a corporate or as a governmental function, 110 ALR 1117; 156 ALR 714.

Liability of municipality for damage to person or property due to hydrant, 113 ALR 661.

Municipal corporation or other governmental unit as within term "corporation," "person," or other term employed in death statute descriptive of parties against whom the action may be maintained, 115 ALR 1287.

Liability of public officer in respect of public money paid out in reliance upon unconstitutional statute, 118 ALR 787.

Liability of municipality for enforcement of an unconstitutional or void ordinance, 118 ALR 1054.

Municipal immunity from liability for torts, 120 ALR 1376; 60 ALR2d 1198.

Constitutionality of statute which relieves municipality from liability for torts, 124 ALR 350.

Lease by municipality of property intended for use and benefit of public as affecting its duty and responsibility in respect of the manner and conditions of operation and maintenance of the property by the lessee, 129 ALR 1163.

Tort liability of municipality or other governmental subdivision in connection with poor relief activities, 134 ALR 762.

Liability for injury to person or damage to property as result of "blackout," 136 ALR 1327; 147 ALR 1442; 148 ALR 1401; 150 ALR 1448; 153 ALR 1433; 154 ALR 1459; 155 ALR 1458; 158 ALR 1463.

Immunity of municipality from liability for torts in exercise of governmental functions as applicable to torts outside municipal limits, 140 ALR 1058.

Collection and disposal of garbage and rubbish as governmental or private function as regards municipal immunity from liability for tort, 156 ALR 714.

Abrogation of state's immunity from liability or suit as affecting immunity of municipality or other governmental unit, 161 ALR 367.

Remedy available against invalid judgment in favor of United States, state, or other governmental unit immune to suit, 163 ALR 244.

Liability of municipality for fire loss due to its failure to provide or maintain adequate water supply or pressure, 163 ALR 348.

Municipal liability for injury to voter in consequence of condition of polling place, 164 ALR 472.

Effect of statute permitting state to be sued upon the question of its liability for negligence or tort, 169 ALR 105.

Liability of municipal corporation for damage to property resulting from inadequacy of drains and sewers due to defects in plan, 173 ALR 1031.

Tortious breach of contract as within consent to suit against United States or state on contract, 1 ALR2d 864.

Liability of municipality or other governmental subdivision in connection with flood-protection measures, 5 ALR2d 57.

Municipality's duty and liability with respect to excavation made by abutting owner to connect his property with service mains in street, 13 ALR2d 922.

Liability of municipality for damage caused by fall of tree or limb, 14 ALR2d 186.

Liability of municipality for injury or damage from explosion or burning of substance stored by third person under municipal permit, 17 ALR2d 683.

Recovery of interest on claim against a governmental unit in absence of provision in contract or express statutory provision, 24 ALR2d 928.

Immunity from liability for damages in tort of state or governmental unit or agency in operating hospital, 25 ALR2d 203; 18 ALR4th 858.

Tort liability of governmental unit for injury or damage resulting from insecticide and vermin eradication operations, 25 ALR2d 1057.

Operation of garage for maintenance and repair of municipal vehicles as governmental function, 26 ALR2d 944.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like, 34 ALR2d 1210.

Liability of municipality in damages for its refusal to grant permit, license, or franchise, 37 ALR2d 694.

State's immunity from tort liability as dependent on governmental or proprietary nature of function, 40 ALR2d 927.

Maintenance of auditorium, community recreational center building, or the like, by municipal corporation as governmental or proprietary function for purposes of tort liability, 47 ALR2d 544.

Liability of municipality for injuries resulting from fall or slipping on debris or litter on outdoor stairway, 47 ALR2d 1086.

Death action against municipal corporation as subject to statute of limitations governing wrongful death actions or that governing actions against a municipality for injury to person or property, 53 ALR2d 1068.

Municipal operation of bathing beach or swimming pool as governmental or proprietary function, for purposes of tort liability, 55 ALR2d 1434.

Municipal operation of sewage disposal plant as governmental or proprietary function, for purposes of tort liability, 57 ALR2d 1336.

Municipality's liability for damage resulting from obstruction or clogging of drains or sewers, 59 ALR2d 281.

Municipality's liability arising from negligence or other wrongful act in carrying out construction or repair of sewers and drains, 61 ALR2d 874.

Suability, and liability, for torts, of public housing authority, 61 ALR2d 1246.

Liability of municipality for torts in connection with airport, 66 ALR2d 634.

Civil liability of school officials for malicious prosecution, 66 ALR2d 749.

Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability, 68 ALR2d 1437.

Waiver of, or estoppel to rely upon, contractual limitation of time for bringing action against municipality or other political subdivision, 81 ALR2d 1039.

Liability of municipality for injuries resulting from falling or slipping on defective outdoor stairway or steps, 92 ALR2d 469.

Snow removal operations as within doctrine of governmental immunity from tort liability, 92 ALR2d 796.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability, 9 ALR3d 382.

Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning, 33 ALR3d 703.

Liability of municipality on quasi contract for value of property or work furnished without compliance with bidding requirements, 33 ALR3d 1164.

Tort liability of public schools and institutions of higher learning for accident occurring during school athletic events, 35 ALR3d 725.

Tort liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork, and manual or vocational training, 35 ALR3d 758.

Liability of prison authorities for injury to prisoner directly caused by assault by other prisoner, 41 ALR3d 1021.

Liability of municipality or other governmental unit for failure to provide police protection, 46 ALR3d 1084.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit, 55 ALR3d 930.

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding, 62 ALR3d 514.

Municipal corporation's safety rules or regulations as admissible in evidence in

action by private party against municipal corporation or its officers or employees for negligent operation of vehicle, 82 ALR3d 1285.

State or municipal liability for invasion of privacy, 87 ALR3d 145.

Governmental tort liability for social service agency's negligence in placement, or supervision after placement, of children, 90 ALR3d 1214.

Governmental liability from operation of zoo, 92 ALR3d 832.

Recovery of exemplary or punitive damages from municipal corporation, 1 ALR4th 448.

Liability of governmental unit or its officers for injury to innocent occupant of moving vehicle, or for damage to such vehicle, as result of police chase, 4 ALR4th 865.

Liability of urban redevelopment authority or other state or municipal agency or entity for injuries occurring in vacant or abandoned property owned by governmental entity, 7 ALR4th 1129.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody, 12 ALR4th 722.

Liability for wrongful autopsy, 18 ALR4th 858.

Liability of governmental entity to builder or developer for negligent issuance of building permit subsequently suspended or revoked, 41 ALR4th 99.

Right of insured, precluded from recovering against owner or operator of uninsured motor vehicle because of governmental immunity, to recover uninsured motorist benefits, 55 ALR4th 806.

Municipal liability for negligent performance of building inspector's duties, 24 ALR5th 200.

Liability of school or school personnel for injury to student resulting from cheerleader activities, 25 ALR5th 784.

36-33-2. Liability for failure to perform discretionary act.

Where municipal corporations are not required by statute to perform an act, they may not be held liable for exercising their discretion in failing to perform the act. (Civil Code 1895, § 747; Civil Code 1910, § 896; Code 1933, § 69-302.)

History of Code section. — This Code section is derived from the decision in Gaskins v. City of Atlanta, 73 Ga. 746 (1883).

Cross references. — Immunity of municipalities and officers or employees thereof for damages resulting from inspections or other actions taken or not taken pursuant to fire protection laws, § 25-2-38.1. Liability of municipalities for defects in public roads, § 32-4-93.

Law reviews. — For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For note, "Adverse Possession of Municipal and County Property Held for Proprietary Purposes: The Unique Georgia Development," see 7 Ga. St. B.J. 482 (1971).

JUDICIAL DECISIONS

Municipal corporation cannot be held liable for failure to perform duty when duty of performance has not been imposed upon the corporation by law, and which the corporation has no power to perform, for lack of authority to raise revenue for that purpose. Mayor of Montezuma v. Law, 1 Ga. App. 579, 57 S.E. 1025 (1907).

Clear line is drawn between a discretionary nonfeasance and the negligent maintenance of something erected by the city in the city's discretion in such manner as to create a dangerous nuisance, and which amounts to misfeasance. In a case of discretionary nonfeasance on the part of the defendant city, the defendant city is not liable. Tamas v. City of

Columbus, 244 Ga. 200, 259 S.E.2d 457 (1979).

School crossing guard — O.C.G.A. § 36-33-2 may not be applicable when a city fails to provide a substitute school crossing guard at an intersection which was normally attended by a crossing guard, even though the city was not required by statute to provide a crossing guard. Whiddon v. O'Neal, 171 Ga. App. 636, 320 S.E.2d 601 (1984).

Whether a city will open a street is discretionary with the city, and the exercise of the city's discretion, one way or the other, gives no right of action to anyone who may have miscalculated the final action of the city. Pittman v. City of Jesup, 232 Ga. 635, 208 S.E.2d 456 (1974).

Failure to identify school safety crossings. — City did not create a nuisance by failing to identify school safety crossings across a public roadway in front of a school. McLaughlin v. City of Roswell, 161 Ga. App. 759, 289 S.E.2d 18 (1982).

Failure to erect traffic light. — In the absence of a law or ordinance requiring the defendant to erect a traffic light at an intersection as a result of which the plaintiff was allegedly injured, the erection and maintenance of such a signal is discretionary, and a city or county cannot be held liable for mere failure to perform such an act. McLaughlin v. City of Roswell, 161 Ga. App. 759, 289 S.E.2d 18 (1982).

Trial court properly granted summary judgment to a city on a parent's negligence claim against the city stemming from a child's serious automobile accident at a known dangerous intersection that was inappropriately signaled because the city was immune from suit as the issue of whether to install a traffic signal at the intersection was a discretionary act, entitling the city to sovereign immunity; further, a successful tax referendum to fund a new traffic light did not create a duty to install a traffic light at the intersection before completing other projects. Riggins v. City of St. Marys, 264 Ga. App. 95, 589 S.E.2d 691 (2003).

Failure to maintain stop sign in a visible condition. — Driver's allegations of negligence against a city for negligent maintenance of a stop sign, which was allegedly obscured by foliage, were subject to summary judgment based on the city's sovereign immunity pursuant to O.C.G.A. § 36-33-1(b). The driver's nuisance claim was barred because the driver failed to show the city's awareness of a problem with the stop sign. Albertson v. City of Jesup, 312 Ga. App. 246, 718 S.E.2d 4 (2011), cert. denied, 2012 Ga. LEXIS 245 (Ga. 2012).

Failure to maintain drainage culvert. — Summary judgment was granted in favor of a city upon a father's claim of negligence under O.C.G.A. § 32-4-93(a) because: (1) there was no showing that the city had a legal duty to expand the culvert pipe in which the father's son drowned, to widen the shoulder of the street, or to erect a guardrail as no statute required the city to take these actions, and the city's construction code did not impose a duty with regard to the culvert; (2) there was no evidence that the city negligently maintained the culvert; and (3) the city had no actual or constructive notice of flooding problems near the culvert or of defects in the culvert. Walden v. City of Hawkinsville, No. 5:03-CV-0398 (DF), 2005 U.S. Dist. LEXIS 21694 (M.D. Ga. Sept. 21, 2005).

No discretionary nonfeasance on the part of the city. — Grant of summary judgment in favor of the city in a wrongful-death action was improper because there was evidence that the decedent had to walk in the same direction as the truck that struck the decedent was traveling; thus, there was an inference of causation. That specification of negligence was an act of misfeasance, for which the city might have been held liable, rather than discretionary nonfeasance, for which the city could not have been held liable pursuant to O.C.G.A. § 36-33-2. Butler v. Carlisle, 299 Ga. App. 815, 683 S.E.2d 882 (2009), cert. denied, No. S10C0052, 2010 Ga. LEXIS 155 (Ga. 2010).

County was under no duty to build bridge across creek which under normal circumstances was safe to ford and therefore not liable for death of car occupants who drowned when creek flooded over ford as car was passing over the ford. Dollar v. Haralson County, 704 F.2d 1540 (11th Cir.), cert. denied, 464 U.S. 963, 104 S. Ct. 399, 78 L. Ed. 2d 341 (1983).

Cited in City of Dublin v. Hobbs, 218 Ga. 108, 126 S.E.2d 655 (1962); Phillips v. Town of Fort Oglethorpe, 118 Ga. App. 62, 162 S.E.2d 771 (1968); Hancock v. City of Dalton, 131 Ga. App. 178, 205 S.E.2d 470 (1974); Bowen v. Little, 139 Ga. App. 176, 228 S.E.2d 159 (1976); Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224 (1978); Banks v. City of Brunswick, 529 F. Supp. 695 (S.D. Ga. 1981); City of Atlanta v. Chambers, 205 Ga. App. 834, 424 S.E.2d 19 (1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 57 Am. Jur. 2d, Municipal, County, School, and State Tort Liability, § 67 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 28. 63 C.J.S., Municipal Corporations, §§ 882, 887.

ALR. — Liability of municipal corporation for tort of officer or employee of water department, 28 ALR 822; 54 ALR 1497.

Commission and other modern forms of municipal government as affecting liability of municipality for torts, 30 ALR 473.

Liability of municipality as affected by license issued by municipal officer, 42 ALR 1208.

Rule of municipal immunity from liability for torts pertaining to exercise of governmental functions as available to municipal lessee or concessioner, 57 ALR 560.

Liability of municipality where sewer originally of ample size has become inadequate by growth or development of territory, 70 ALR 1347.

Liability of municipality for injury due to defective catch-basin covers, and the like, maintained in street in connection with drainage or sewer system, 71 ALR 753.

Applicability to federal courts of state constitutional or statutory provisions regarding liability of county or other political subdivision to suit, 86 ALR 1019.

Power of legislature to impose, or municipality to assume, liability for acts of officials or employees pertaining to governmental functions, 89 ALR 394.

Liability of municipal corporation for its own misfeasance or nonfeasance, as distinguished from misfeasance or nonfeasance of officer or employee, 102 ALR 656.

Liability of municipality because of misappropriation, diversion, or withholding of funds collected by or paid to it on account of special assessment against property for improvements, 107 ALR 1354.

Liability of municipality for damage to person or property due to hydrant, 113 ALR 661.

Responsibility for injury or damage by or to W.P.A. worker or other workman employed as a means of reducing unemployment, 120 ALR 1148.

Municipal immunity from liability for torts, 120 ALR 1376; 60 ALR2d 1198.

Constitutionality of statute which relieves municipality from liability for torts, 124 ALR 350.

Lease by municipality of property intended for use and benefit of public as affecting its duty and responsibility in respect of the manner and conditions of operation and maintenance of the property by the lessee, 129 ALR 1163.

Liability of municipal corporations for injuries due to conditions in parks, 142 ALR 1340.

Remedy available against invalid judgment in favor of United States, state, or other governmental unit immune to suit, 163 ALR 244.

Liability of municipality for fire loss due to its failure to provide or maintain adequate water supply or pressure, 163 ALR 348.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle or licensing of operation, 163 ALR 1375.

Liability of municipality or other governmental subdivision in connection with flood-protection measures, 5 ALR2d 57.

Liability of municipality for damage caused by fall of tree or limb, 14 ALR2d 186.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like, 34 ALR2d 1210.

Liability of municipality for injuries resulting from fall or slipping on debris or litter on outdoor stairway, 47 ALR2d 1086.

Municipal immunity from liability for torts, 60 ALR2d 1198.

Municipality's liability arising from negligence or other wrongful act in carrying out construction or repair of sewers and drains, 61 ALR2d 874.

Suability, and liability, for torts, of public housing authority, 61 ALR2d 1246.

Liability of municipality for injuries resulting from falling or slipping on defective outdoor stairway or steps, 92 ALR2d 469.

Municipal liability for personal injury or death under mob violence or antilynching statutes, 26 ALR3d 1142.

Municipal liability for property damage under mob violence statutes, 26 ALR3d 1198.

Liability of municipality or other governmental body on implied or quasi contract for value of property or work, 33 ALR3d 1164.

Liability of public officer or body for harm done by prisoner permitted to escape, 44 ALR3d 899.

Liability of municipality or other governmental unit for failure to provide police protection, 46 ALR3d 1084.

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding, 62 ALR3d 514.

Governmental liability from operation of zoo, 92 ALR3d 832.

36-33-3. Liability for torts of police or other officers.

A municipal corporation shall not be liable for the torts of policemen or other officers engaged in the discharge of the duties imposed on them by law. (Civil Code 1895, § 744; Civil Code 1910, § 893; Code 1933, § 69-307.)

History of Code section. — This Code section is derived from the decisions in Cook v. Mayor of Macon, 54 Ga. 468 (1875) and Wilson v. Mayor of Macon, 88 Ga. 455, 14 S.E. 710 (1892).

Cross references. — Liability of officers, agents, and others of counties, municipalities, for acts performed while fighting fires or performing duties at scene of emergencies, § 51-1-30.

Law reviews. — For article, "Personal Liability of State Officials Under State and Federal Law," see 9 Ga. L. Rev. 821 (1975). For article discussing origin and construction of Georgia statute concerning municipal liability for conduct of its officers, see 14 Ga. L. Rev. 239 (1980). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Rule of nonliability generally. — Municipal corporation is not liable for the negligence of the municipality's officers and employees when acting in a governmental function. Banks v. City of Albany, 83 Ga. App. 640, 64 S.E.2d 93 (1951); Bagwell v. City of Gainesville, 106 Ga. App. 367, 126 S.E.2d 906 (1962).

No distinction between negligent and intentional torts. — Former Code 1933, §§ 69-301 and 69-307 (see O.C.G.A. §§ 36-33-1 and 36-33-3) did not suggest any intention to distinguish between torts of nonfeasance or misfeasance committed by negligence, and other torts committed corruptly, maliciously, willfully, or wantonly. Brown v. City of Union Point, 52 Ga. App. 212, 183 S.E. 78 (1935).

When liability arises. — Municipalities are liable for the acts of a municipalities' officers, agents, and servants only in instances as follows: (a) in the performance of any function when a statute specifically provides for such liability; (b) for neglect to perform or improper or unskillful performance of the municipalities' ministerial duties; and (c) for the performance of the municipalities' governmental functions when the same amounts to the taking or damaging of private prop-

erty for public purposes without first making adequate compensation therefor, or the creation of a nuisance dangerous to the life and health of persons because of its proximity to the people in the enjoyment of the people's property. Greenway v. Thompson, 368 F. Supp. 387 (N.D. Ga. 1973).

This rule cannot be avoided or circumvented by allegations in the nature of conclusions seeking to assert as the basis for municipal liability the act of its placing the active tortfeasor in the position to commit the tort, nor by alleging that in employing the tortfeasor and retaining the tortfeasor on the payroll the municipality was guilty of maintaining a nuisance when the facts otherwise alleged affirmatively show that the real asserted basis of liability is on the theory of respondeat superior. City of Cumming v. Chastain, 97 Ga. App. 13, 102 S.E.2d 97 (1958).

Applicability of waiver of immunity provisions. — O.C.G.A. § 36-33-3 provides immunity only to governmental entities; consequently, it is a governmental immunity statute and is subject to the waiver of immunity provision of O.C.G.A. § 33-24-51(b). Ekarika v. City of East Point, 204 Ga. App. 731, 420 S.E.2d 391 (1992).

Municipality can waive governmental immunity. — In a negligence action against a city by plaintiffs injured in a collision with an on-duty police officer, the city's purchase of a general liability insurance policy covering claims in excess of $250,000 waived the city's sovereign immunity to the limits of the policy; since the city did not have a self-insurance plan, participate in any sort of insurance fund or pool, or set aside funds for the payment of liability claims, plaintiffs could recover only damages exceeding the $250,000 threshold. McLemore v. City Council, 212 Ga. 862, 443 S.E.2d 505 (1994).

In the absence of waiver of the immunity afforded by O.C.G.A. § 36-33-3, there can be no municipal liability for a claim based on allegedly reckless conduct by police. Williams v. Solomon, 242 Ga. App. 807, 531 S.E.2d 734 (2000).

Notice of powers implied. — In dealing with public agents, every person must take notice of the extent of their power at the person's peril. Laing v. Mayor of Americus, 86 Ga. 756, 13 S.E. 107 (1891).

City cannot ratify. — Municipality cannot ratify the unlawful acts of the municipality's subordinate officials done in the pursuance of the municipality's governmental functions. Davis v. City of Rome, 23 Ga. App. 188, 98 S.E. 231 (1919).

Federal civil rights actions. — Supremacy clause of U.S. Const. prevents state court from construing federal rule to permit state immunity defense to claim made under 42 U.S.C. § 1983, the Civil Rights Act of 1871. Davis v. City of Roswell, 250 Ga. 8, 295 S.E.2d 317 (1982), cert. denied, 475 U.S. 1122, 106 S. Ct. 1640, 90 L. Ed. 2d 185 (1986).

When a governing body has worked constitutional deprivation of a citizen pursuant to an impermissible or corrupt policy which is intentional and deliberate, a cause of action is accrued under the federal Civil Rights Act in spite of the doctrine of sovereign immunity. City of Cave Spring v. Mason, 252 Ga. 3, 310 S.E.2d 892 (1984).

Acts of mayor in setting bond. — City is not liable in damages because the city's mayor required of a person charged with a violation of a city ordinance, a larger bond for the person's appearance than the law authorized, even if the failure of such person to give bond and the person's consequent confinement were occasioned thereby. Gray v. Mayor of Griffin, 111 Ga. 361, 36 S.E. 792 (1900).

Wrongful refusal of bail. — City was not liable in damages because mayor, as judge of city's court for the trial of ordinance violations, wrongfully refused to allow bail to an alleged offender and wrongfully directed a police officer to commit the offender to jail, since the offender was imprisoned until released by a habeas corpus proceeding, nor did the appearance of the mayor or an attorney for the municipality in resistance of the habeas corpus constitute a ratification by the municipality of these alleged illegal acts by the municipality's officers, so as to render the municipality liable therefore. Brown v. City of Union Point, 52 Ga. App. 212, 183 S.E. 78 (1935).

Failure to provide police protection. — When a failure to provide police

protection is alleged, there can only be no liability based on a municipality's duty to protect the general public. However, when there is a special relationship between the individual and the municipality which sets the individual apart from the general public and engenders a special duty owed to that individual, the municipality may be subject to liability for the nonfeasance of the municipality's police department. Benning Constr. Co. v. Dykes Paving & Constr. Co., Inc., 263 Ga. 16, 426 S.E.2d 564 (1993).

Acts of police officers. — When a police officer was acting as an officer of the city at the time of a homicide, the city would not be liable for the reason that the police officer was in the discharge of a governmental function, and in such case recovery cannot be had against the city. Pounds v. Central of Ga. Ry., 142 Ga. 415, 83 S.E. 96 (1914).

Doctrine of governmental immunity protected the city from liability for the actions of the city's employees, including the police officer who arrested the individual for criminal trespass in the discharge of the officer's lawful duties, and, thus, the city was protected by that immunity from the arrested individual's claims against the city. Reese v. City of Atlanta, 261 Ga. App. 761, 583 S.E.2d 584 (2003).

In a tort action for personal injuries and property damage arising from an auto collision filed against a city and the city's police officer, the trial court erred in granting a city summary judgment as: (1) O.C.G.A. § 40-6-6(d)(2) did not apply; and (2) the city waived the city's sovereign immunity to the extent that the city purchased liability coverage to cover the officer's actions in operating that officer's police car. But, the trial court properly granted summary judgment to the officer, given that the officer was engaged in a discretionary function of responding to an emergency situation at the time the accident at issue occurred. Weaver v. City of Statesboro, 288 Ga. App. 32, 653 S.E.2d 765 (2007), cert. denied, 2008 Ga. LEXIS 221 (Ga. 2008).

In an arrestee's state law claims, a city was not liable for actions of the city's police officers because the officers engaged in protected ministerial functions. Lavassani v. City of Canton, 760 F. Supp. 2d 1346 (N.D. Ga. Aug. 20, 2010).

Knowingly maintaining violent police officer. — It is unclear whether municipal immunity continues to encompass a nuisance claim against a city for knowingly maintaining a violent police officer. Brooks v. Scheib, 813 F.2d 1191 (11th Cir. 1987).

Municipal corporation is not liable for illegal arrest of a person by the municipal corporation's police officers. Cook v. Mayor of Macon, 54 Ga. 468 (1875); Gray v. Mayor of Griffin, 111 Ga. 361, 36 S.E. 792 (1900).

Drunken driving arrest. — Town marshal, in arresting and placing in town lockup a person for drunken driving, would be engaged in discharge of duty imposed on the marshal by law. Archer v. City of Austell, 68 Ga. App. 493, 23 S.E.2d 512 (1942).

Collision by police officer. — Trial court erred in granting the city's motion for judgment on the pleadings since the city could have been vicariously liable to plaintiff for the officer's alleged negligent act of driving the officer's patrol car into plaintiff's vehicle up to the limits of the city's policy of motor vehicle liability. Ekarika v. City of East Point, 204 Ga. App. 731, 420 S.E.2d 391 (1992).

Claim for breach of an implied contract of bailment by a city in taking and holding plaintiff's motorcycle was not barred under the language of O.C.G.A § 36-33-3, which is restricted to tort claims. Harper v. Savannah Police Dep't, 179 Ga. App. 449, 346 S.E.2d 891 (1986).

Negligence of fire fighter. — Even if cutting a hole and leaving the hole in an exposed condition was negligence on the part of a fire fighter, the city was not liable in damages to a person injured in consequence of the negligence. Rogers v. City of Atlanta, 143 Ga. 153, 84 S.E. 555 (1915).

City not liable for jail conditions. — Because a city was immune from suit in performing the governmental function of maintaining the city jail, it could not be concluded as a matter of law, in a federal civil rights action against the city and the city's police officers, alleging that the physical conditions in the jail deprived the defendant of due process, that "adequate

state remedies" existed. Lambert v. McFarland, 612 F. Supp. 1252 (N.D. Ga. 1984).

Acts of warden. — Even though sentence imposed by a recorder might have been wholly void, the city would not be liable for the tortious and illegal acts of a warden. Davis v. City of Rome, 23 Ga. App. 188, 98 S.E. 231 (1919).

Municipal corporation is not liable for injuries sustained by prisoner at hands of another confined in the same cell, notwithstanding police officer may have been guilty of wrong or negligence in confining the prisoner with intoxicated fellow-prisoner who was on that account violent and dangerous. Wilson v. Mayor of Macon, 88 Ga. 455, 14 S.E. 710 (1892).

City not liable for negligence in erecting prison. — In erecting and maintaining a city prison, a municipal corporation is exercising a purely governmental function, and is, therefore, not liable in damages to a person arrested and imprisoned therein by the municipality's police officers, for injuries sustained by the person, while so confined, by reason of the improper construction or negligent maintenance of such prison. Gray v. Mayor of Griffin, 111 Ga. 361, 36 S.E. 792 (1900).

Nonliability of railway company for wrongful killing by police officer. — When police officer of municipality, being paid by railway company to keep order at depot, wrongfully kills a passenger, the police officer is said to be a municipal officer, and the railway company is not liable in damages. Pounds v. Central of Ga. Ry., 142 Ga. 415, 83 S.E. 96 (1914).

Pleading failure to state claim sufficient. — Under notice pleading, an answer pleading a defense of failure to state a claim was minimally sufficient to give notice of substantive immunity defenses under either O.C.G.A. § 31-11-8 or § 36-33-3. Ramsey v. City of Forest Park, 204 Ga. App. 98, 418 S.E.2d 432 (1992).

Cited in Maddox v. City of Atlanta, 49 Ga. App. 791, 171 S.E. 573 (1933); Pitts v. City of Macon, 134 Ga. App. 467, 214 S.E.2d 720 (1975); Morin v. City of Valdosta, 140 Ga. App. 361, 231 S.E.2d 133 (1976); Tucker v. Thompson, 421 F. Supp. 297 (M.D. Ga. 1976); City of Atlanta v. Fry, 148 Ga. App. 269, 251 S.E.2d 90 (1978); Sellfors v. United States, 697 F.2d 1362 (11th Cir. 1983); City of Atlanta v. Gilmere, 252 Ga. 406, 314 S.E.2d 204 (1984); Acker v. City of Elberton, 176 Ga. App. 580, 336 S.E.2d 842 (1985); Poss v. City of North Augusta, 205 Ga. App. 894, 424 S.E.2d 73 (1992); City of Atlanta v. Heard, 252 Ga. App. 179, 555 S.E.2d 849 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 201.

Am. Jur. Proof of Facts. — Excessive Force by Police Officer, 21 POF3d 685.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 888, 894, 895, 910.

ALR. — Liability of municipal corporation for tort of officer or employee of water department, 24 ALR 545; 28 ALR 822; 54 ALR 1497.

Liability of municipality as affected by license issued by municipal officer, 42 ALR 1208.

Policemen as public officers, 84 ALR 309; 156 ALR 1356.

Validity of statute or ordinance vesting discretion in public officials without prescribing a rule of action, 92 ALR 400.

Liability of municipality or other political unit for malicious prosecution, 103 ALR 1512.

Death action against municipal corporation as subject to statute of limitations governing wrongful death actions or that governing actions against a municipality for injury to person or property, 53 ALR2d 1068.

Municipal liability for personal injuries resulting from police officer's use of excessive force in performance of duty, 88 ALR2d 1330.

Liability of municipal corporation for shooting of bystander by law enforcement officer attempting to enforce law, 76 ALR3d 1176.

Liability of governmental unit or its officers for injury to innocent pedestrian

or occupant of parked vehicle, or for damage to such vehicle, as result of police chase, 100 ALR3d 815.

Immunity of public officer from liability for injuries caused by negligently released individual, 5 ALR4th 773.

Municipal or state liability for injuries resulting from police roadblocks or commandeering of private vehicles, 19 ALR4th 937.

Liability for failure of police response to emergency call, 39 ALR4th 691.

Governmental tort liability for failure to provide police protection to specifically threatened crime victim, 46 ALR4th 948.

36-33-4. Personal liability of councilmembers and other municipal officers.

Members of the council and other officers of a municipal corporation shall be personally liable to one who sustains special damages as the result of any official act of such officers if done oppressively, maliciously, corruptly, or without authority of law. (Civil Code 1895, § 752; Civil Code 1910, § 901; Code 1933, § 69-208.)

History of Code section. — This Code section is derived from the decision in Pruden v. Love, 67 Ga. 190 (1881).

Cross references. — False arrest, false imprisonment, and malicious prosecution, Ch. 7, T. 51.

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963). For article, "Georgia Local Government Officers: Rights for Their Wrongs," see 13 Ga. L. Rev. 747 (1979). For article discussing origin and construction of Georgia law of personal liability for municipal officials, see 14 Ga. L. Rev. 239 (1980). For article, "Individual Liability in Georgia Local Government Law: The Haunting Hiatus of Hennessy," see 40 Mercer L. Rev. 27 (1988). For article, "Local Government Tort Liability: the Summer of '92," see 9 Ga. St. U. L. Rev. 405 (1993).

For note discussing governmental immunity from tort liability in Georgia, see 5 Ga. St. B.J. 494 (1969).

JUDICIAL DECISIONS

There are two conditions for the liability of commissions under this section, namely for the defendants to have acted contrary to a nondiscretionary, ministerial duty, and to have acted with malice. City of Hawkinsville v. Wilson & Wilson, Inc., 231 Ga. 110, 200 S.E.2d 262 (1973) (see O.C.G.A. § 36-33-4).

Effect of the provisions of former Code 1933, § 69-208 (see O.C.G.A. § 36-33-4) was to create liability against municipal officers under such conditions when the officers commit a tort, which as provided in former Code 1933, § 105-101 (see O.C.G.A. § 51-1-1) was the unlawful violation of a private legal right. Davis v. Johnson, 92 Ga. App. 858, 90 S.E.2d 426 (1955).

Malice defined. — Malice may consist in a general disregard of the right consideration of mankind, directed by chance against the individual injured. Kitchens v. Jefferson County, 85 Ga. App. 902, 70 S.E.2d 527 (1952).

Special damages required — When plaintiff city council member failed to plead special damages in action against city manager and mayor's secretary for invasion of privacy based on taping of plaintiff's phone conversation with mayor, plaintiff failed to establish that plaintiff was entitled to proceed under O.C.G.A. § 36-33-4. Kennedy v. Johnson, 205 Ga. App. 220, 421 S.E.2d 746, cert. denied, 205 Ga. App. 900, 421 S.E.2d 746 (1992).

General damages recoverable. — Claim under O.C.G.A. § 36-33-4 is essentially a tort action, not one based on a regulatory restriction; thus, general as well as compensatory damages may be

recovered. City of Buford v. Ward, 212 Ga. App. 752, 443 S.E.2d 279 (1994).

Claim based on actions taken without authority of law. — Plaintiff businessman, who was refused a certificate of occupancy for a garden center based on the inadequacy of a deceleration/acceleration lane, proved a cause of action against city officials under O.C.G.A. § 36-33-4 since the policy regarding construction of the lane was not based on an ordinance setting forth guidelines or specific factors sufficient to apprise citizens of what to expect and, thus, actions taken pursuant to such policy were without authority of law; further, plaintiff's testimony that plaintiff expended $2,800 to extend the lane beyond the length required for DOT approval was sufficient to show special damages. City of Buford v. Ward, 212 Ga. App. 752, 443 S.E.2d 279 (1994).

Trial court erred in finding that a mayor was entitled to official immunity in city employees' action for wrongful termination because a question of fact remained as to whether the mayor acted without authority of law by failing to comply with the city's resolution requiring the mayor to get city council approval prior to any termination. Owens v. City of Greenville, 290 Ga. 557, 722 S.E.2d 755 (2012).

Immunity from liability. — Public official who fails to perform purely ministerial duties required by law is subject to an action for damages by one who is injured by the official's omission; however, when an officer is invested with discretion and is empowered to exercise the officer's judgment in matters brought before the officer, the officer is sometimes called a quasi-judicial officer, and when so acting the officer is usually given immunity from liability to persons who may be injured as a result of an erroneous decision, provided the acts complained of are done within the scope of the officer's authority, and without wilfulness, malice, or corruption. McDay v. City of Atlanta, 204 Ga. App. 621, 420 S.E.2d 75, cert. denied, 204 Ga. App. 922, 420 S.E.2d 75 (1992).

Police officer's conduct in arresting plaintiff, while unprofessional, was not willful, fraudulent, corrupt, or malicious; therefore, the officer enjoyed limited immunity. Corporate Prop. Investors v. Milon, 249 Ga. App. 699, 549 S.E.2d 157 (2001).

Individual not liable if sued in official capacity. — Notwithstanding the provisions of O.C.G.A. § 36-33-4, a drinking water commissioner could not be held personally liable for requiring a water customer to extend a water main because the commissioner was not sued in the commissioner's individual capacity. The city could be held liable for the commissioner's actions because, although the actions were unauthorized, the actions were within the scope of the commissioner's employment. City of Atlanta v. Harbor Grove Apts., LLC, 308 Ga. App. 57, 706 S.E.2d 722 (2011).

Merely styling a suit against a public officer as one brought against the officer personally does not deprive the officer of any immunity to which the officer might otherwise be entitled for the officer's official acts. McDay v. City of Atlanta, 204 Ga. App. 621, 420 S.E.2d 75, cert. denied, 204 Ga. App. 922, 420 S.E.2d 75 (1992).

Evidence insufficient to lift immunity. — Trial court correctly granted summary judgment in favor of police chief when the record was devoid of any conduct by the chief which could remotely be construed as being sufficient to lift the shield that protects public officers acting colore officii; therefore the plaintiff was not allowed to recover for the plaintiff's spouse's suicide while in police custody. McDay v. City of Atlanta, 204 Ga. App. 621, 420 S.E.2d 75, cert. denied, 204 Ga. App. 922, 420 S.E.2d 75 (1992).

Evidence did not support plaintiff's claim of conspiracy against the plaintiff by municipal officials based upon the city's issuance of citations for an electrical code violation and for having a derelict car on the plaintiff's premises. Brown v. City of Chamblee, 211 Ga. App. 45, 438 S.E.2d 396 (1993).

Trial court properly granted summary judgment to police officer on the arrested individual's claims against the officer arising out of the individual's arrest for criminal trespass as the officer was performing a discretionary duty at the time of the arrest and no showing was made that the officer acted maliciously or with an intent

to injure; accordingly, the officer was entitled to official immunity from liability. Reese v. City of Atlanta, 261 Ga. App. 761, 583 S.E.2d 584 (2003).

It is a jury question as to whether acts of a city manager in breaching a contract to perform a ministerial duty falls within provisions of O.C.G.A. § 36-33-4. City of Douglas v. Johnson, 157 Ga. App. 618, 278 S.E.2d 160 (1981).

Nonliability for abatement of nuisance. — When the council of a municipal corporation, in the exercise of the municipality's police powers, and after due notice, declare a building to be a nuisance, and require the building to be torn down, the council would not be liable as individuals to the owner for damages, unless the council acted maliciously, oppressively, corruptly, or without authority of law. Pruden v. Love, 67 Ga. 190 (1881).

Claim of nuisance created by failure to maintain and repair sewer lines. — Plaintiff's assertion that the failure of the city to properly maintain and identify the repairs needed on the sewer lines was a nuisance did not give rise to a right of action in nuisance as to plaintiffs. Rea v. Bunce, 179 Ga. App. 628, 347 S.E.2d 676 (1986), cert. denied and appeal dismissed, 484 U.S. 998, 108 S. Ct. 685, 98 L. Ed. 2d 638 (1988).

Applicability to council member presiding in police court. — This section has no application to acts of a member of a town council when the member is presiding in a police court. Calhoun v. Little, 106 Ga. 336, 32 S.E. 86 (1898) (see O.C.G.A. § 36-33-4).

Revocation of permit. — Provisions of this section as to oppressive, malicious, corrupt, and unlawful acts could not be applied to the acts of a mayor when the petition did not allege that the mayor by force, threats, or any means whatsoever prevented the plaintiff from conducting plaintiff's business or exercising the privilege and license, or canceled or revoked the permit, and only alleged that the mayor notified the plaintiff to the effect that the plaintiff's permit was void and that the plaintiff could not operate an abattoir. Davis v. Johnson, 92 Ga. App. 858, 90 S.E.2d 426 (1955) (see O.C.G.A. § 36-33-4).

Cited in Foster v. Crowder, 117 Ga. App. 568, 161 S.E.2d 364 (1968); Koehler v. Massell, 229 Ga. 359, 191 S.E.2d 830 (1972); Copeland v. Young, 133 Ga. App. 54, 209 S.E.2d 719 (1974); Wilson v. Strange, 235 Ga. 156, 219 S.E.2d 88 (1975); Pitts v. City of Macon, 134 Ga. App. 467, 214 S.E.2d 720 (1975); Knight v. Troup County Bd. of Educ., 144 Ga. App. 634, 242 S.E.2d 263 (1978); Gaskins v. Hand, 219 Ga. App. 823, 466 S.E.2d 688 (1996); Oglethorpe Dev. Group, Inc. v. Coleman, 271 Ga. 173, 516 S.E.2d 531 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 133, 243 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 304, 336.

ALR. — Personal liability of public official for personal injury on highway, 40 ALR 39; 57 ALR 1037.

Personal liability of municipal officer or employee for negligence in performance of duty, 40 ALR 1358; 53 ALR 381.

Liability of municipal officers for diversion of money from one fund to another, 96 ALR 664.

Civil liability of law enforcement officers for malicious prosecution, 28 ALR2d 646; 81 ALR4th 1031.

Personal liability of policeman, sheriff, or other peace officer, or bond, for negligently causing personal injury or death, 60 ALR2d 873.

Civil liability of school officials for malicious prosecution, 66 ALR2d 749.

Liability for personal injury or damage from operation of fire department vehicle, 82 ALR2d 312.

36-33-5. Written demand prerequisite to action for injury to person or property; time for presenting claim and for consideration by governing authority; suspension of limitations.

(a) No person, firm, or corporation having a claim for money damages against any municipal corporation on account of injuries to person or property shall bring any action against the municipal corporation for such injuries, without first giving notice as provided in subsection (b) of this Code section.

(b) Within six months of the happening of the event upon which a claim against a municipal corporation is predicated, the person, firm, or corporation having the claim shall present the claim in writing to the governing authority of the municipal corporation for adjustment, stating the time, place, and extent of the injury, as nearly as practicable, and the negligence which caused the injury. No action shall be entertained by the courts against the municipal corporation until the cause of action therein has first been presented to the governing authority for adjustment.

(c) Upon the presentation of such claim, the governing authority shall consider and act upon the claim within 30 days from the presentation; and the action of the governing authority, unless it results in the settlement thereof, shall in no sense be a bar to an action therefor in the courts.

(d) The running of the statute of limitations shall be suspended during the time that the demand for payment is pending before such authorities without action on their part. (Ga. L. 1899, p. 74, § 1; Civil Code 1910, § 910; Code 1933, § 69-308; Ga. L. 1953, Ex. Sess., p. 338, § 1; Ga. L. 1956, p. 183, § 1.)

Law reviews. — For article, "Georgia Municipal Tort Liability: Ante Litem Notice," see 4 Ga. L. Rev. 134 (1969). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981). For article surveying developments in Georgia torts law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 247 (1981). For annual survey of local government law, see 35 Mercer L. Rev. 233 (1983). For annual survey of torts law, see 35 Mercer L. Rev. 291 (1983). For article, "Defending the Lawsuit: A First-Round Checklist," see 22 Ga. St. B.J. 24 (1985). For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For annual survey article discussing local government law, see 51 Mercer L. Rev. 397 (1999). For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000). For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001). For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005). For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006). For

survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Analysis

General Consideration
Sufficiency of Notice
Formalities of Notice
Waiver and Estoppel
Time of Notice and Action
Procedure

General Consideration

Constitutionality. — O.C.G.A. § 36-33-5 does not violate the constitutional guarantees of either due process or equal protection. Shoemaker v. Aldmor Mgt., Inc., 249 Ga. 430, 291 S.E.2d 549 (1982).

This section is in derogation of the common law and should be strictly construed as against the municipality. Maryon v. City of Atlanta, 149 Ga. 35, 99 S.E. 116 (1919); Scearce v. Mayor of Gainesville, 33 Ga. App. 411, 126 S.E. 883, cert. denied, 33 Ga. App. 829 (1925); City of Atlanta v. Hawkins, 45 Ga. App. 847, 166 S.E. 262 (1932); City of Rome v. Stone, 46 Ga. App. 259, 167 S.E. 325 (1933); Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353 (1936); Mayor of Buford v. Light, 65 Ga. App. 99, 15 S.E.2d 459 (1941); City of Atlanta v. J.J. Black & Co., 110 Ga. App. 667, 139 S.E.2d 515 (1964); Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245 (1972); Hicks v. City of Atlanta, 154 Ga. App. 809, 270 S.E.2d 58 (1980) (see O.C.G.A. § 36-33-5).

Purpose of this section was simply to give to the municipality notice that the citizen or property owner has a grievance against the municipality. Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520 (1930), answer conformed to 42 Ga. App. 476, 156 S.E. 634 (1931); City of Atlanta v. Blackmon, 50 Ga. App. 448, 178 S.E. 467 (1935); Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353 (1936); Jones v. City Council, 100 Ga. App. 268, 110 S.E.2d 691 (1959); City of Fairburn v. Clanton, 102 Ga. App. 556, 117 S.E.2d 197 (1960); City of Atlanta v. J.J. Black & Co., 110 Ga. App. 667, 139 S.E.2d 515 (1964); Holland v. Calhoun, 114 Ga. App. 51, 150 S.E.2d 155, rev'd on other grounds, 222 Ga. 817, 152 S.E.2d 752 (1966); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265 (1969); Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245 (1972); Dennis v. City of Palmetto, 130 Ga. App. 242, 202 S.E.2d 717 (1973); Washington v. City of Columbus, 136 Ga. App. 682, 222 S.E.2d 583 (1975) (see O.C.G.A. § 36-33-5).

Purpose and intent of the legislature in the adoption of O.C.G.A. § 36-33-5 was fourfold: (1) to afford the officials of an offending city opportunity to investigate the complaint at a time when the evidence relative thereto is calculated to be more readily available; (2) to afford the officials an opportunity, if the complaint relates to a continuing nuisance, to take proper steps to abate the nuisance before the effects thereof become great or far-reaching; (3) to bar a claimant's right of recovery for any and all claims arising by reasons of matters that may have transpired or existed giving rise to a cause of action on dates more than six months prior to the giving of the required ante litem notice; and (4) to afford the city an opportunity to negotiate a settlement of such claims as the city may determine to be meritorious before litigation is commenced, thus protecting the interests of the general public by reducing the exposure of the funds in the city treasury to depletion from growing claims for damages. City of Gainesville v. Moss, 108 Ga. App. 713, 134 S.E.2d 547 (1963), overruled on other grounds, City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488 (1994); Robinette v. Johnston, 637 F. Supp. 922 (M.D. Ga. 1986).

Notice requirement is a statute of limitations, and satisfaction of the requirement is a condition precedent to maintaining a lawsuit on a claim against a municipality. Everett v. Napper, 632 F. Supp. 1481 (N.D. Ga. 1986), aff'd in part, rev'd in part on other grounds, 833 F.2d 1507 (11th Cir. 1987).

Like other statutes of limitations, this statute of limitations does not begin to run in the case of continuing torts until the injury is discovered; therefore, former jail inmates' suit against a town for compelling the inmates, while incarcerated, to perform clean-up work on a contaminated building was not time-barred. City of Forsyth v. Bell, 258 Ga. App. 331, 574 S.E.2d 331 (2002).

Use of summary judgment. — When property owners assert claims against a municipality, flexibility by the court is required in determining whether compliance with the ante litem notice requirements of O.C.G.A. § 36-33-5 is properly considered a matter in abatement which must be raised in a motion to dismiss under O.C.G.A. § 9-11-12; accordingly, consideration of the matter within the summary judgment context, pursuant to O.C.G.A. § 9-11-56, was proper because matters outside of the pleadings, including the owners' depositions, were considered. Davis v. City of Forsyth, 275 Ga. App. 747, 621 S.E.2d 495 (2005).

Purpose of notice requirement is to apprise city of claim in order that the city may determine whether or not to adjust the claim without suit. Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541 (1982); Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653 (1983).

Notice not protected First Amendment speech. — Plaintiff's ante litem notice against the city did not constitute speech protected by the First Amendment. Holbrook v. City of Alpharetta, 112 F.3d 1522 (11th Cir. 1997).

Claim for attorney fees and costs. — Plaintiff's failure to comply with the notice requirement of O.C.G.A. § 36-33-5 precluded the plaintiff's ability to sue for money damages in the form of attorney fees and costs of litigation under O.C.G.A. § 13-6-11. Dover v. City of Jackson, 246 Ga. App. 524, 541 S.E.2d 92 (2000).

Identification with former § 15-10-16. — The Georgia Court of Appeals has identified former § 15-10-16, concerning actions against justices of the peace, with the municipal ante litem notice provision contained in O.C.G.A. § 36-33-5. Doss v. Long, 93 F.R.D. 112 (N.D. Ga. 1981).

O.C.G.A. § 36-33-5 provides that ante litem notice be given the city as a condition precedent to suit against the city. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653 (1983).

Effect of failure to comply. — Failure to comply with the provisions of this law within the time required thereby is a bar to any right of action against a municipality, and the giving of such notice is a condition precedent to the bringing of any action against a municipality. City of Atlanta v. Barrett, 102 Ga. App. 469, 116 S.E.2d 654 (1960); City of Gainesville v. Moss, 108 Ga. App. 713, 134 S.E.2d 547 (1963), overruled on other grounds, City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488 (1994); Stambaugh v. City of Demorest, 221 Ga. 527, 145 S.E.2d 539 (1965); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265 (1969); Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339 (1969); Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971); Dennis v. City of Palmetto, 130 Ga. App. 242, 202 S.E.2d 717 (1973); Goen v. City of Atlanta, 224 Ga. App. 484, 481 S.E.2d 244 (1997); Whipple v. City of Cordele, 231 Ga. App. 274, 499 S.E.2d 113 (1998); Stanford v. City of Manchester, 246 Ga. App. 129, 539 S.E.2d 845 (2000).

Effect of section as conferring immunity. — Before the enactment of former Code 1933, § 69-308 (see O.C.G.A. § 36-33-5) requiring a demand, the liability of every municipal corporation in Georgia, under former Code 1933, § 69-301 (see O.C.G.A. § 36-33-1), was unqualified and unconditional. By the enactment of former Code 1933, § 69-308 the unqualified liability of each municipal corporation became conditional upon the demand required by the statute. City of Atlanta v. Hudgins, 193 Ga. 618, 19 S.E.2d 508 (1942).

Elements of section. — This section consists of both a time limitation and a

General Consideration (Cont'd)

requirement of exhaustion of administrative remedies. Ehlers v. City of Decatur, 614 F.2d 54 (5th Cir. 1980) (see O.C.G.A. § 36-33-5).

No conflict with other sections. — There is no conflict between the statute of limitation applicable to insurance suits against municipalities and the constitutional and statutory provisions relating to waiver of immunity. Cobb v. Board of Comm'rs of Rds. & Revenue, 151 Ga. App. 472, 260 S.E.2d 496 (1979).

Tort claims against city barred because of the failure to comply with ante-litem notice statute. Camp v. City of Columbus, 252 Ga. 120, 311 S.E.2d 834 (1984); Fulton v. City of Roswell, 982 F. Supp. 1472 (N.D. Ga. 1997).

When plaintiff failed to give the required notice of the plaintiff's state tort claims against a city, plaintiff's state tort claims against the city were barred as a matter of law. Young v. City of Atlanta, 631 F. Supp. 1498 (N.D. Ga. 1986).

In a civil rights action, plaintiff was awarded attorney's fees and costs incident to the assertion of a frivolous defense by the defendant-city that dismissal was appropriate because the city had not received ante litem notice of the suit. Booker v. City of Atlanta, 586 F. Supp. 340 (N.D. Ga. 1984), aff'd, 827 F.2d 774 (11th Cir. 1987).

Applicability of section to 42 U.S.C. § 1983 actions. — Action against city under 42 U.S.C. § 1983 is materially different from a negligence suit required to be submitted for adjustment under O.C.G.A. § 36-33-5; therefore § 1983 provides a remedy independent of any provided by state law and, consequently, the ante litem notice requirement does not apply to § 1983 actions. Williams v. Posey, 475 F. Supp. 133 (M.D. Ga. 1979); Ehlers v. City of Decatur, 614 F.2d 54 (5th Cir. 1980); Robinette v. Johnston, 637 F. Supp. 922 (M.D. Ga. 1986).

Requirement of notice in O.C.G.A § 36-33-5 does not apply to an action brought under 42 U.S.C. § 1983. City of Atlanta v. J.A. Jones Constr. Co., 195 Ga. App. 72, 392 S.E.2d 564 (1990), rev'd and remanded on other grounds, 260 Ga. 658, 398 S.E.2d 369 (1990), cert. denied, 500 U.S. 928, 111 S. Ct. 2042, 114 L. Ed. 2d 126 (1991).

Trial court erred in holding that plaintiff's action against the city was barred by the plaintiff's failure to give ante litem notice since the notice provisions of O.C.G.A. § 36-33-5 do not apply to actions filed pursuant to 42 U.S.C. § 1983. Armour v. Davidson, 203 Ga. App. 12, 416 S.E.2d 92, cert. denied, 202 Ga. App. 905, (1992).

Former psychiatric inmate's pro se complaint against a city in which the inmate alleged civil rights and other violations was properly dismissed based on the inmate's failure to comply with the ante litem notice provisions of O.C.G.A. § 36-33-5. Although the provisions did not apply to actions filed pursuant to 42 U.S.C. § 1983, the complaint had not been filed pursuant to § 1983, and the inmate had not alleged any facts that would give rise to § 1983 liability. White v. City of Atlanta Police Dep't, 289 Ga. App. 575, 657 S.E.2d 545 (2008).

Notice not shown. — In a nuisance suit brought by homeowners against a city, it was proper to grant the city's motion for judgment notwithstanding the verdict as to one of the homeowners on the ground that the homeowner had not given the ante litem notice required by O.C.G.A. § 36-33-5(b); the city had not stipulated that such notice had been given, and although ante litem notice given by the homeowner's spouse might have been sufficient to apprise the city of the homeowner's claim, the homeowners had not cited to where in the record the spouse's ante litem notice appeared. City of Atlanta v. Broadnax, 285 Ga. App. 430, 646 S.E.2d 279 (2007), cert. denied, 2007 Ga. LEXIS 615, 648 (Ga. 2007).

Contract not shown. — Developer which claimed that a mayor and council had breached a contract by delaying the provision of water to a subdivision had not shown the existence of a contract that would preclude the need for ante litem notice; the town had voted to construct a water line, but had not committed to a specific date for completion, and there was no other evidence that the parties had reached a meeting of the minds as to the

time for installation. King v. Comfort Living, Inc., 287 Ga. App. 337, 651 S.E.2d 484 (2007).

Imposition by state of conditions precedent to civil rights suit. — By its terms this section applies to claims for money damages on account of negligence attributable to the municipality. Under 42 U.S.C. § 1983, plaintiff must prove that some policy, practice, ordinance, or regulation of the city has deprived plaintiff of plaintiff's rights under the Constitution of the United States. Williams v. Posey, 475 F. Supp. 133 (M.D. Ga. 1979) (see O.C.G.A. § 36-33-5).

Section 1983 plaintiff to be given benefit of effected toll. — Although plaintiffs need not comply with state exhaustion requirements before filing claims under 42 U.S.C. § 1983 in federal court, nothing prevents the plaintiffs from so doing; and given that plaintiffs may, if the plaintiffs choose, seek to exhaust state administrative remedies, the rule that federal courts must employ the applicable state statute of limitations in § 1983 cases clearly requires federal courts to give a § 1983 plaintiff the benefit of any toll effected by plaintiff's compliance with a state exhaustion requirement. Lawson v. Glover, 957 F.2d 801 (11th Cir. 1987).

Effect on special Act. — When at the time of enactment of a special law amending a city charter, providing that no suit for injury to person or property could be maintained against the city unless within 90 days from such injury written notice was given, there existed a general law, this section. This general law provided for the case covered by the special law, and the latter was repugnant to Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV), and therefore void. City of Atlanta v. Hudgins, 193 Ga. 618, 19 S.E.2d 508 (1942) (see O.C.G.A. § 36-33-5).

Insurer of city not agent for purposes of notice. — Contract between a city and the city's insurer does not convert the insurer into the agent of the city for the purpose of ante litem notice required by O.C.G.A. § 36-33-5; thus, notice to a city's insurer is not substantial compliance with the requirement of notice to the governing authority of the municipality. City of LaGrange v. USAA Ins. Co., 211 Ga. App. 19, 438 S.E.2d 137 (1993); Evans v. City of Covington, 240 Ga. App. 373, 523 S.E.2d 594 (1999).

Effect of insurance statute. — Former Code 1933, § 69-308 (see O.C.G.A. § 36-33-5) was still the law irrespective of insurance coverage, and it was not changed by former Code 1933, § 56-2437 (see O.C.G.A. § 33-24-51). Perdue v. City Council, 137 Ga. App. 702, 225 S.E.2d 62 (1976).

Similarity to presentment of claims against county. — While this section, providing for the filing of a claim against a municipality before suit against such municipality, is unlike the provisions of the statute (see O.C.G.A § 36-11-1) relative to the presentment of claims against a county, the objects and purposes of these two statutes are similar. Davis v. Cobb County, 65 Ga. App. 533, 15 S.E.2d 814 (1941) (see O.C.G.A. § 36-33-5).

Words "any suit" (now "any action") clearly mean that in every suit wherein such damages are sought, notice shall be given. Thompson v. City of Atlanta, 219 Ga. 190, 132 S.E.2d 188 (1963).

Generally accepted meaning of the phrase "governing authority" or "governing body," in reference to the operation of city or county governments, is a council or board performing legislative functions. Peek v. City of Albany, 101 Ga. App. 564, 114 S.E.2d 451 (1960).

Terminology synonymous. — General character of the claim is all that is necessary; when the word "claim," and the word "suit," and the words "cause of action," appear in this section, those words are synonymous. Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520 (1930), answer conformed to 42 Ga. App. 476, 156 S.E. 634 (1931) (see O.C.G.A. § 36-33-5).

"Claim" as used in the first sentence, and "demand for payment" as used in the last proviso of this section have the same meaning. The presentation of the claim for adjustment is a condition precedent to bringing the action. Jones v. City Council, 100 Ga. App. 268, 110 S.E.2d 691 (1959) (see O.C.G.A. § 36-33-5).

Applicability to counterclaims. — Defendant property-lessor and business

General Consideration (Cont'd)

operator's failure to give adequate ante litem notice for counterclaims against city alleging tortious interference with their business relationship warranted dismissal of these counterclaims. Sims v. City of Alpharetta, 207 Ga. App. 411, 428 S.E.2d 94 (1993).

Applicability to breach of contract. — Ante litem notice provisions of this section do not apply to claims arising out of a breach of contract. City of Atlanta v. J.J. Black & Co., 110 Ga. App. 667, 139 S.E.2d 515 (1964) (see O.C.G.A. § 36-33-5).

Summary judgment for a city in a police officer's breach of contract claim was error because O.C.G.A. § 36-33-5 did not apply to contract suits, and the police officer's failure to provide ante litem notice to the city in a contract action did not bar the suit. Neely v. City of Riverdale, 298 Ga. App. 884, 681 S.E.2d 677 (2009), cert. denied, No. S09C1925, 2010 Ga. LEXIS 28 (Ga. 2010).

Applicability to action for illegal imprisonment. — This section applies to a claim against a city for illegal imprisonment under sentence from a recorder's court. Marks v. City of Rome, 145 Ga. 399, 89 S.E. 324 (1916) (see O.C.G.A. § 36-33-5).

Litigant seeking injunctive relief is not bound by the requirements of this statute. Ehlers v. City of Decatur, 614 F.2d 54 (5th Cir. 1980) (see O.C.G.A. § 36-33-5).

Applicability to out-of-state municipalities. — This section applies not only to municipalities located in the state, but also to any other municipality. Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971) (see O.C.G.A. § 36-33-5).

Applicability to zoning disputes. — Ante litem notice provisions applied to a claim for damages arising out of a zoning dispute. City of Walnut Grove v. Questco, Ltd., 275 Ga. 266, 564 S.E.2d 445 (2002).

Property cannot be encumbered. — City board of education has no authority to place an encumbrance upon articles which the city had unconditionally purchased on account several months previously, and which the city had installed as necessary to the operation of the schools. Southern Sch. Supply Co. v. City of Abbeville, 34 Ga. App. 93, 128 S.E. 231 (1925).

Inverse condemnation. — The "ante litem" notice requirements of O.C.G.A. § 36-33-5 applied to an action against a city for inverse condemnation, as it was a suit for money damages against a municipal corporation on account of asserted injuries to the plaintiff's property rights. Brownlow v. City of Calhoun, 198 Ga. App. 710, 402 S.E.2d 788 (1991).

O.C.G.A. § 36-33-5, taken together with City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488 (1994) does not stand for the proposition that a municipality's liability for the effects of a continuing nuisance or trespass is truncated by ante litem notice; the trial court did not err in allowing an owner to present evidence of damages to the owner's property due to a city's abatable nuisance for the period after the owner presented ante litem notice to the city. City of Atlanta v. Landmark Envtl. Indus., 272 Ga. App. 732, 613 S.E.2d 131 (2005).

Cited in Carruthers v. City of Hawkinsville, 42 Ga. App. 476, 156 S.E. 634 (1931); City of Atlanta v. Dinkins, 46 Ga. App. 19, 166 S.E. 429 (1932); Thrasher v. City of Atlanta, 178 Ga. 514, 173 S.E. 817 (1934); Lawrence v. City of La Grange, 63 Ga. App. 587, 11 S.E.2d 696 (1940); Cannon v. City of Macon, 81 Ga. App. 310, 58 S.E.2d 563 (1950); City of Macon v. Yaughn, 83 Ga. App. 610, 64 S.E.2d 369 (1951); City of Decatur v. Robertson, 85 Ga. App. 747, 70 S.E.2d 135 (1952); Duren v. City of Thomasville, 92 Ga. App. 706, 89 S.E.2d 840 (1955); Nimmons v. City of La Grange, 94 Ga. App. 511, 95 S.E.2d 314 (1956); City of Griffin v. McKneely, 101 Ga. App. 811, 115 S.E.2d 463 (1960); Pettaway v. City of Albany, 105 Ga. App. 739, 125 S.E.2d 568 (1962); Haygood v. City of Marietta, 108 Ga. App. 99, 131 S.E.2d 856 (1963); City of Douglas v. Cartrett, 109 Ga. App. 683, 137 S.E.2d 358 (1964); Allison v. English, 116 Ga. App. 318, 157 S.E.2d 324 (1967); Campbell v. City of Atlanta, 117 Ga. App. 824, 162 S.E.2d 213 (1968); Phillips v. Town of Fort Oglethorpe, 118 Ga. App. 62, 162

S.E.2d 771 (1968); City of Atlanta v. Mapel, 121 Ga. App. 567, 174 S.E.2d 599 (1970); Mayor of Athens v. Schaeffer, 122 Ga. App. 729, 178 S.E.2d 764 (1970); Copeland v. Young, 133 Ga. App. 54, 209 S.E.2d 719 (1974); City of E. Point v. Terhune, 144 Ga. App. 865, 242 S.E.2d 728 (1978); Lockaby v. City of Cedartown, 151 Ga. App. 281, 259 S.E.2d 683 (1979); City Council v. Lee, 153 Ga. App. 94, 264 S.E.2d 683 (1980); Claxton Poultry Co. v. City of Claxton, 155 Ga. App. 308, 271 S.E.2d 227 (1980); Acker v. City of Elberton, 176 Ga. App. 580, 336 S.E.2d 842 (1985); Precise v. City of Rossville, 196 Ga. App. 870, 397 S.E.2d 133 (1990); Williams v. Department of Human Resources, 234 Ga. App. 638, 507 S.E.2d 230 (1998); City of Gainesville v. Waters, 258 Ga. App. 555, 574 S.E.2d 638 (2002); Scott v. City of Valdosta, 280 Ga. App. 481, 634 S.E.2d 472 (2006); SunTrust Bank v. Hightower, 291 Ga. App. 62, 660 S.E.2d 745 (2008).

Sufficiency of Notice

Substantial compliance with this section is all that is required. Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520 (1930), answer conformed to 42 Ga. App. 476, 156 S.E. 634 (1931); Mayor of Savannah v. Helmken, 43 Ga. App. 84, 158 S.E. 64 (1931); City of Atlanta v. Hawkins, 45 Ga. App. 847, 166 S.E. 262 (1932); City of Rome v. Stone, 46 Ga. App. 259, 167 S.E. 325 (1933); Lundy v. City Council, 51 Ga. App. 655, 181 S.E. 237 (1935); Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353 (1936); Olmstead v. Mayor of Savannah, 57 Ga. App. 815, 196 S.E. 923 (1938); Mayor of Buford v. Light, 65 Ga. App. 99, 15 S.E.2d 459 (1941); City of Acworth v. McLain, 99 Ga. App. 407, 108 S.E.2d 821 (1959); Caldwell v. Mayor of Savannah, 101 Ga. App. 683, 115 S.E.2d 403 (1960); Taylor v. King, 104 Ga. App. 589, 122 S.E.2d 265 (1961); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265 (1969); Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245 (1972); City of Claxton v. Claxton Poultry Co., 134 Ga. App. 679, 215 S.E.2d 718 (1975); City of Arlington v. Smith, 238 Ga. 50, 230 S.E.2d 863 (1976); Hicks v. City of Atlanta, 154 Ga. App. 809, 270 S.E.2d 58 (1980); City of Columbus v. Preston, 155 Ga. App. 379, 270 S.E.2d 909 (1980); Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653 (1983) (see O.C.G.A. § 36-33-5).

Property owners did not substantially comply with the notice requirement of O.C.G.A. § 36-33-5(b) in the owners' assertion, by amendment to the owners' complaint, of a personal injury claim against a municipality, arising from the continued backup of sewage on the owners' property, as the only indication in the owners' ante litem notice that the owners were seeking personal injuries was a statement that the sewage backup had "caused an ongoing health hazard"; such did not state the "extent of the injury," including the "nature, character, and particulars of the injury," and those personal injury claims were properly barred. Davis v. City of Forsyth, 275 Ga. App. 747, 621 S.E.2d 495 (2005).

Trial court erred in granting a city summary judgment because city employees substantially complied with ante litem notice requirements; a letter the employees' acting attorney sent to the mayor sufficed to place the city on notice of the general character of the complaint, namely the wrongful terminations, and, in a general way, of the time, place, and extent of the injury. Owens v. City of Greenville, 290 Ga. 557, 722 S.E.2d 755 (2012).

Mere notice insufficient. — Mere notice of injury, although in writing and announcing an intention to file suit, does not constitute a presentation of the claim or demand to the governing authorities of the municipality for adjustment so as to meet the requirements of this section. Jones v. City Council, 100 Ga. App. 268, 110 S.E.2d 691 (1959); Chiles v. City of Smyrna, 146 Ga. App. 260, 246 S.E.2d 177 (1978) (see O.C.G.A. § 36-33-5).

Notice of intention to sue held sufficient. — Written notice to a municipal corporation of the intention of a person injured to bring suit against the municipality at a certain term of court, to recover for alleged injuries, is a presentation in writing of such claim to the governing authority of the municipal corporation for adjustment as required by this section. Lewis v. City of Moultrie, 31 Ga. App. 712,

Sufficiency of Notice (Cont'd)

121 S.E. 843, cert. denied, 31 Ga. App. 812 (1924), overruled on other grounds, Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541 (1982) (see O.C.G.A. § 36-33-5).

Claimant substantially complied with the statute as the claimant's letter to the defendant city included the elements of time, place, and extent of the injury since: (1) the termination of a contract between the parties was the subject of the letter and, therefore, the nature and the extent of the injury were communicated; (2) the plaintiff specifically referenced a conversation between a city commissioner and the plaintiff's president, so the elements of time and place were included; and (3) the letter even listed potential causes of action. Info. Sys. & Networks Corp. v. City of Atlanta, 281 F.3d 1220 (11th Cir. 2002) (see O.C.G.A. § 36-33-5).

Hazard notice filed by city not sufficient. — Issuance of a "Hazard Notice" by the city against the plaintiff did not constitute an ante litem notice on behalf of the plaintiff which would satisfy the notice requirements of O.C.G.A. § 36-33-5. Brown v. City of Chamblee, 211 Ga. App. 45, 438 S.E.2d 396 (1993).

It is necessary only that the city shall be put on notice of the general character of the complaint and, in a general way, of time, place, and extent of injury. Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520 (1930), answer conformed to 42 Ga. App. 476, 156 S.E. 634 (1931); City of Rome v. Stone, 46 Ga. App. 259, 167 S.E. 325 (1933); City of Atlanta v. Blackmon, 50 Ga. App. 448, 178 S.E. 467 (1935); Lundy v. City Council, 51 Ga. App. 655, 181 S.E. 237 (1935); Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353 (1936); Mayor of Buford v. Light, 65 Ga. App. 99, 15 S.E.2d 459 (1941); Caldwell v. Mayor of Savannah, 101 Ga. App. 683, 115 S.E.2d 403 (1960); City of Atlanta v. J.J. Black & Co., 110 Ga. App. 667, 139 S.E.2d 515 (1964); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265 (1969); City of Columbus v. Preston, 155 Ga. App. 379, 270 S.E.2d 909 (1980).

What is substantial compliance. — Requirements of this section are sufficiently complied with when the notice gives information sufficiently definite to locate the property alleged to have been injured, the amount of damages claimed, and sufficient data to enable the city authorities to examine into the alleged injuries and determine whether the claim should be adjusted without suit. Kennedy v. Mayor of Savannah, 8 Ga. App. 98, 68 S.E. 652 (1910); Mayor of Macon v. Stringfield, 16 Ga. App. 480, 85 S.E. 684 (1915); Marks v. City of Rome, 145 Ga. 399, 89 S.E. 324 (1916); City of Griffin v. Stewart, 19 Ga. App. 817, 92 S.E. 400 (1917); Sirmans v. City of Ray City, 32 Ga. App. 430, 124 S.E. 60 (1924); Scearce v. Mayor of Gainesville, 33 Ga. App. 411, 126 S.E. 883, cert. denied, 33 Ga. App. 829 (1925); Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520 (1930), answer conformed to 42 Ga. App. 476, 156 S.E. 634 (1931); Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353 (1936); Olmstead v. Mayor of Savannah, 57 Ga. App. 815, 196 S.E. 923 (1938); Aldred v. City of Summerville, 215 Ga. 651, 113 S.E.2d 108 (1960); Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245 (1972) (see O.C.G.A. § 36-33-5).

Substantial compliance not shown. — When appellant gave oral notice to a representative of the municipal corporation and documents prepared by city employees and the city's insurer were not presented to the city by the appellant as required by O.C.G.A. § 36-33-5, there was no proper ante litem notice. Clark v. City of Smyrna, 212 Ga. App. 598, 442 S.E.2d 461 (1994).

This section does not contemplate that notice shall be drawn with all technical niceties necessary in framing a declaration for the purpose of the law was simply to give to the municipality notice that the citizen or property owner has a grievance against the municipality and it is necessary only that the city be put on notice of the general character of the complaint and, in a general way, of the time, place, and extent of the injury. City of E. Point v. Christian, 40 Ga. App. 633, 151 S.E. 42 (1929); Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520 (1930), answer conformed to 42 Ga. App. 476, 156 S.E. 634 (1931); Mayor of Savan-

nah v. Helmken, 43 Ga. App. 84, 158 S.E. 64 (1931); City of Rome v. Stone, 46 Ga. App. 259, 167 S.E. 325 (1933); Olmstead v. Mayor of Savannah, 57 Ga. App. 815, 196 S.E. 923 (1938); City of Dalton v. Joyce, 70 Ga. App. 557, 29 S.E.2d 112 (1944); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265 (1969); City of Columbus v. Preston, 155 Ga. App. 379, 270 S.E.2d 909 (1980) (see O.C.G.A. § 36-33-5).

Service of verbatim copy of petition sufficient notice. — Service upon the municipal corporation of a verbatim copy of the petition which the person injured intends to file in a suit against the municipality, which states the time, place, and extent of the injuries complained of, accompanied by a letter from the plaintiff's attorneys to the clerk of the municipal corporation reciting the name of the case and stating that "we enclose herewith claim in the above-stated matter as required by law," is sufficient as a presentation of the claim for adjustment. Lewis v. City of Moultrie, 31 Ga. App. 712, 121 S.E. 843, cert. denied, 31 Ga. App. 812 (1924), overruled on other grounds, Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541 (1982).

Absolute exactness of notice not necessary. — This section recognizes, by the use of the words "as near as practicable," that absolute exactness need not be had; a substantial compliance with the section is all that is required; and, when the notice describes the time, place, and extent of the injury with reasonable certainty, that notice will be sufficient. City of E. Point v. Christian, 40 Ga. App. 633, 151 S.E. 42 (1929); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265 (1969) (see O.C.G.A. § 36-33-5).

When the notice states the time, place, manner, circumstances, and details of the accident causing the injuries for which the claim was made and the acts of negligence charged against the municipality as well as the amount claimed as damages, this is a sufficient compliance with the statute, and the fact that the claim filed with the municipality states that the plaintiffs claimed "35,000 from said municipality," and the action was filed jointly against the municipality and an individual is immaterial. City of Dalton v. Joyce, 70 Ga. App. 557, 29 S.E.2d 112 (1944).

Words "as near as practicable," as used in this section do not make any difference in their qualification between "time, place, and extent of such injury," and "the negligence which caused the same." City of Atlanta v. Blackmon, 50 Ga. App. 448, 178 S.E. 467 (1935) (see O.C.G.A. § 36-33-5).

Slight inaccuracies of the facts will not render the notice invalid. City of Fairburn v. Clanton, 102 Ga. App. 556, 117 S.E.2d 197 (1960).

Variance between petition and notice. — If notice and petition correspond in all substantial respects as to matters, information of which is required to be given, the variance is immaterial. Langley v. City Council, 118 Ga. 590, 45 S.E. 486 (1903); Smith v. City of Elberton, 5 Ga. App. 286, 63 S.E. 48 (1908); Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520 (1930), answer conformed to, 42 Ga. App. 476, 156 S.E. 634 (1931).

Petition need not actually follow the notice, and an immaterial variance between the two as to time, place, or extent of injury will not amount to a fatal variance. Mayor of Macon v. Stringfield, 16 Ga. App. 480, 85 S.E. 684 (1915); Williamson v. Mayor of Savannah, 19 Ga. App. 784, 92 S.E. 291 (1917).

Notice need not be as clear and specific as petition. — It would be entirely contrary to the purpose of this section to say that the negligence relied on must be as clearly and specifically set forth in the notice as in the petition; the object and purpose of the notice is merely to give the city an opportunity to investigate the matter in order to determine whether the city will pay without suit. City of Atlanta v. Blackmon, 50 Ga. App. 448, 178 S.E. 467 (1935) (see O.C.G.A. § 36-33-5).

Technical accuracy in filing claims is no longer necessary, and the old doctrine of strict and literal compliance, with the statute's attendant harsh and unfair results, has virtually disappeared from the law. What is required by this section is that there be substantial compliance with a demand or claim requirement. Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245 (1972) (see O.C.G.A. § 36-33-5).

Sufficiency of Notice (Cont'd)

Notice not required to specify amount of damages. — It is not a prerequisite to suit against a municipal corporation in this state, for injury to person or property, that the written notice required under this section should specify any amount of money claimed as damages. Maryon v. City of Atlanta, 149 Ga. 35, 99 S.E. 116 (1919); Maryon v. City of Atlanta, 23 Ga. App. 716, 99 S.E. 316 (1919); Mayor of Savannah v. Clarke, 42 Ga. App. 275, 155 S.E. 790 (1930); Mayor of Waynesboro v. Hargrove, 111 Ga. App. 26, 140 S.E.2d 286 (1965) (see O.C.G.A. § 36-33-5).

For contrary view that notice must specify amount of damages, see Mayor of Macon v. Stringfield, 16 Ga. App. 480, 85 S.E. 684 (1915); Williamson v. Mayor of Savannah, 19 Ga. App. 784, 92 S.E. 291 (1917); Scearce v. Mayor of Gainesville, 33 Ga. App. 411, 126 S.E. 883, cert. denied, 33 Ga. App. 829 (1925).

Ante litem notice is sufficient without inclusion of monetary amount. Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541 (1982).

Plaintiff not bound by amount claimed in notice. — It is not necessary that the plaintiff state any amount in the notice to meet the requirements of this section, and plaintiff is not bound by the amount of damages claimed in plaintiff's notice. City of Gainesville v. Moss, 108 Ga. App. 713, 134 S.E.2d 547 (1963), overruled on other grounds, City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488 (1994). (see O.C.G.A. § 36-33-5).

Addition of the amount is unnecessary and, if set forth, mere surplusage, and does not bar a recovery of a greater sum. Maryon v. City of Atlanta, 149 Ga. 35, 99 S.E. 116 (1919); Scearce v. Mayor of Gainesville, 33 Ga. App. 411, 126 S.E. 883, cert. denied, 33 Ga. App. 829 (1925).

Words "extent of such injury" do not mean the amount of damages claimed in dollars and cents, but mean the nature, character, and particulars of the injury, and which should be stated "as near as practicable." Maryon v. City of Atlanta, 149 Ga. 35, 99 S.E. 116 (1919).

No need to disclose jurisdictional fact. — Neither in the title nor in the body of this section is there any requirement that claimants shall disclose any jurisdictional fact. Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520 (1930), answer conformed to, 42 Ga. App. 476, 156 S.E. 634 (1931) (see O.C.G.A. § 36-33-5).

Plaintiff must show "substantial compliance" with section. — Under this section, it is a prerequisite to the recovery of money damages from a municipal corporation on account of an injury to person or property, that the plaintiff shall show a "substantial compliance" with the statute's provisions and not only that a written claim of the nature and contents specified shall have been presented before the suit to the governing authority of the municipality for adjustment, but that either the municipal authorities must have actually passed upon the claim, or more than 30 days must have elapsed between its presentation and the filing of the suit, within which the authorities failed to act upon it. City of La Fayette v. Rosser, 53 Ga. App. 228, 185 S.E. 377 (1936) (see O.C.G.A. § 36-33-5).

Three letters of protest to city department held sufficient. — When an unsuccessful bidder sent 3 protest letters to a city's procurement department, and received no answer, the trial court correctly ruled that the three letters complied substantially with the requirements of O.C.G.A. § 36-33-5. City of Atlanta v. J.A. Jones Constr. Co., 195 Ga. App. 72, 392 S.E.2d 564 (1990), rev'd and remanded on other grounds, 260 Ga. 658, 398 S.E.2d 369 (1990), cert. denied, 500 U.S. 928, 111 S. Ct. 2042, 114 L. Ed. 2d 126 (1991).

Letters held sufficient. — Landowners substantially complied with statutory ante litem requirements of O.C.G.A. § 36-33-5 as the letter the landowners sent to the city alleging damages from continuing nuisance the city allegedly maintained on the landowners property and that identified the nature and location of the damage, the cause, and the nature of the potential cause of action, sufficiently put the city on notice of the problem occurring on the landowners' property. City of Columbus v. Barngrover, 250 Ga. App. 589, 552 S.E.2d 536 (2001).

Notice found to be insufficient. — Letter written by the plaintiff's son failed to present any claim or demand for adjustment and, therefore, did not satisfy the statutory requirement for a written demand prerequisite to an action for injury to person or property; buried as it was amid reference to a prior letter (that antedated the plaintiff's fall), the generally poor state of the sidewalks downtown, the financial ability of the city to repair the sidewalks, multiple instances of poor zoning ordinances, the responsiveness of elected officials to property owners, the lamented absence of building requirements and the need to enforce existing zoning ordinances, the bare mention of the plaintiff's arm needing surgery after plaintiff tripped on uneven concrete was not sufficient to put a reasonable recipient on notice that the injury specified would be pursued as a claim for money damages against the municipality requiring investigation, analysis, and perhaps pre-litigation adjustment. Woodall v. City of Villa Rica, 236 Ga. App. 788, 513 S.E.2d 525 (1999).

Because a driver failed to present sufficient record evidence that a city received timely ante litem notice that the driver sustained a personal injury, much less the nature, character, or particularities of any such injury, but the notice submitted merely established that the driver sustained property damage, the driver did not substantially comply with O.C.G.A. § 36-33-5(b); thus, the trial court properly granted the city summary judgment on that issue. Harris-Jackson v. City of Cochran, 287 Ga. App. 722, 652 S.E.2d 607 (2007).

Grant of summary judgment in favor of the city in negligence action was appropriate because the claimant failed to show that the claimant timely presented a written notice of the negligence claim to the city as required under O.C.G.A. § 36-33-5(b). An unauthenticated, purported notice did not create a genuine issue of material fact for summary judgment purposes. Jones v. City of Willacoochee, 299 Ga. App. 741, 683 S.E.2d 683 (2009).

Trial court did not err in granting a city's motion for summary judgment in a citizen's personal injury action because the citizen's ante litem notice was insufficient when although the notice gave the date and the particulars of the citizen's fall, the notice failed to properly or even generally identify where the incident actually occurred; while the citizen previously gave an oral report of the incident, which allowed the city to investigate the actual site of the fall, the citizen could not rely upon such oral notice or the city's earlier investigations and repairs to satisfy the requirements of O.C.G.A. § 36-33-5. Simmons v. Mayor of Savannah, 303 Ga. App. 452, 693 S.E.2d 517 (2010).

Formalities of Notice

Required contents. — Specified elements of notice are "the time, place, and extent of such injury, as nearly as practicable, and the negligence which caused the same." "Extent of such injury" means the nature, character, and particulars of the injury. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653 (1983).

Oral notice insufficient. — Oral notice to the mayor and city manager, together with written notice to the municipality which was five days late, will not suffice. Allen v. City of Macon, 118 Ga. App. 88, 162 S.E.2d 783 (1968).

Oral notice to a municipal corporation or a representative thereof is not considered substantial compliance with the provisions of the statute. Gillingwater v. City of Valdosta, 177 Ga. App. 241, 339 S.E.2d 287 (1985).

Oral notice with appearance before council insufficient. — Oral notices followed by actual appearance before the mayor and council of the city in official session as the city's governing body, and the officials' assurances of indemnification, will not suffice and cannot create an estoppel. Allen v. City of Macon, 118 Ga. App. 88, 162 S.E.2d 783 (1968).

Written notice addressed to municipality sufficient. — Requirement of this section that the ante litem notice be in writing addressed to the governing authority of the municipality is substantially complied with when the written notice is addressed to the municipality. City of Atlanta v. Frank, 120 Ga. App. 273, 170

Formalities of Notice (Cont'd)

S.E.2d 265 (1969) (see O.C.G.A. § 36-33-5).

In order for notice to be in compliance with this section, the notice must be addressed to and received by the municipality or one of the municipality's departments or officials. Chiles v. City of Smyrna, 146 Ga. App. 260, 246 S.E.2d 177 (1978); Hicks v. City of Atlanta, 154 Ga. App. 809, 270 S.E.2d 58 (1980); Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541 (1982) (see O.C.G.A. § 36-33-5).

Ante litem notice addressed to and received by mayor is sufficient compliance with O.C.G.A. § 36-33-5. Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541 (1982).

Letter addressed to "Mayor's Office, City of Gainesville, Gainesville, Ga. 30501" created factual issue as to notice required under O.C.G.A. § 36-33-5 and precluded a grant of summary judgment. Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541 (1982).

Notice to mayor and council. — Notice of damages for injuries addressed to the Mayor and Council of Greensboro instead of to the city in the city's corporate name is sufficient, and the fact that the notice attempts a compromise does not render the notice insufficient. City of Greensboro v. Robinson, 19 Ga. App. 199, 91 S.E. 244 (1917).

Leaving notice with clerk of city commission. — Filing of the required notice in writing in the office of, and leaving of the notice with, the officer who is the secretary or the clerk of the city commission, which is the governing authority of the city, and is the officer who is the custodian of the records of the city, is a presentation of the claim to the governing authority of the city as required. Davis v. City of Rome, 37 Ga. App. 762, 142 S.E. 171 (1928).

Notice required under this section must be given by person injured and having a claim because a city is only required to make adjustments with parties who make known the parties' claim and the parties' identity as claimants. Chiles v. City of Smyrna, 146 Ga. App. 260, 246 S.E.2d 177 (1978) (see O.C.G.A. § 36-33-5).

Notice may be given by one other than plaintiff. — When there is only one cause of action, a notice given a municipality setting out the time and place of the occurrence, the extent and nature of the injury, to whom occasioned, and the negligence which allegedly caused the injury is a sufficient "substantial compliance" with this section, although the notice may have been given by one other than the plaintiff in the present suit. Taylor v. King, 104 Ga. App. 589, 122 S.E.2d 265 (1961) (see O.C.G.A. § 36-33-5).

Subrogation notice from insurer insufficient. — Letter from the landowner's insurance carrier which fails to set out the time, place, extent of injury, or negligence which caused the injury and is nothing more than a subrogation notice letter is not sufficient notice under O.C.G.A. § 36-33-5. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653 (1983).

Notice of a personal injury claim by a tenant is not sufficient as ante litem notice of a property damage claim by the landlord under O.C.G.A. § 36-33-5. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653 (1983).

There is no requirement as to name and address of claimant in this section; failure to state either does not render the notice insufficient or noncompliant with this section. Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245 (1972) (see O.C.G.A. § 36-33-5).

Even if claim requirement, unlike this section, demands address of claimant, that requirement is deemed satisfied if an address is given at which or through which the claimant may be found in order that the local government officials may make such investigation of the merits of the claim as may be desired. Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245 (1972) (see O.C.G.A. § 36-33-5).

Waiver and Estoppel

Knowledge of claim alone cannot work waiver of notice. — That the city governing authorities may have had knowledge of the fact that a party had a claim which the party expected to assert

against the city, either from communications which do not meet the requisites of written notice under this section, or from a reference of the claim to an insurance carrier which undertook an investigation and settlement, cannot work a waiver of the notice, an estoppel to assert lack thereof, or toll the time for giving the notice. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339 (1969); Robinette v. Johnston, 637 F. Supp. 922 (M.D. Ga. 1986) (see O.C.G.A. § 36-33-5).

Notice not required when city, as party to contract, aware of claims. — Ante litem notice to a municipality is required for claims "on account of injuries to person or property." Property rights in contracts being intangible in nature rather than tangible, the notice was not required where the city, as a party to the contract or negotiations leading up to the contract in question, was well aware of the conflicting claims, if any, arising out of the contract. Holbrook v. City of Atlanta, 139 Ga. App. 510, 229 S.E.2d 21 (1976).

Notice not required for claims that were not for injury to person or property. — No ante litem notice to the city under O.C.G.A. § 36-33-5 was required for city water customers' claims for unjust enrichment, money had and received, and breach of the city code because the claims were not claims for injuries to a person or property covered under § 36-33-5. City of Atlanta v. Benator, 310 Ga. App. 597, 714 S.E.2d 109 (2011).

Individual acts of city official will not create estoppel or waiver of this section when it is not shown that such city official had the actual or delegated authority of the governing body to waive such municipal rights. Peek v. City of Albany, 101 Ga. App. 564, 114 S.E.2d 451 (1960) (see O.C.G.A. § 36-33-5).

Statutory requirements for ante litem notice to the governing authority of the city generally may not be waived by the city or by an individual, even if that individual is the official directly responsible for the injury or for claims adjustment. City of LaGrange v. USAA Ins. Co., 211 Ga. App. 19, 438 S.E.2d 137 (1993).

City's insurer. — City did not waive the ante litem notice requirement because the appellant's claim was referred to the city's insurer. Clark v. City of Smyrna, 212 Ga. App. 598, 442 S.E.2d 461 (1994).

Notice sent to wrong party. — City waived the city's claim that the subject ante litem notice did not comply with O.C.G.A. § 36-33-5 by sending the notice to a city claims investigator, rather than the city attorney or the mayor. City of Atlanta v. Atlantic Realty Co., 205 Ga. App. 1, 421 S.E.2d 113 (1992).

City not estopped from invoking notice requirement by city attorney's unauthorized declarations. — Any unauthorized declarations on the part of the city attorney to the effect that no written ante litem notice would be required in view of the fact that the matter had already been brought to the city's attention would not estop the city from invoking the statutory notice requirement since there was no evidence that the city attorney had any authority to waive the statutory notice requirement on behalf of the city. Gillingwater v. City of Valdosta, 177 Ga. App. 241, 339 S.E.2d 287 (1985).

Governing officials of municipal corporation have no right to waive provisions of this section, and the municipality cannot be estopped by the representations of the municipality's governing officials to a claimant that the claim will be settled without litigation. City of Calhoun v. Holland, 222 Ga. 817, 152 S.E.2d 752 (1966); Allen v. City of Macon, 118 Ga. App. 88, 162 S.E.2d 783 (1968) (see O.C.G.A. § 36-33-5).

Municipality not liable when no notice and defect has not existed long enough to substitute for notice. — When the defective condition of a sidewalk is due to a failure to repair or to negligent acts of third persons, a city is not liable unless the city has had actual notice of the defect, or unless the city appears from the facts in the case that the defect could have been ascertained by the exercise of ordinary care, as when the defect existed for such a length of the time that notice will be implied. City of Rome v. Stone, 46 Ga. App. 259, 167 S.E. 325 (1933).

Two appearances by plaintiff insufficient to waive notice. — Although notice was in the possession of the governing body of the municipal corporation be-

Waiver and Estoppel (Cont'd)

fore whom the plaintiff twice appeared, that alone would be insufficient to waive written notice within the time limited. Holland v. Calhoun, 114 Ga. App. 51, 150 S.E.2d 155, rev'd on other grounds, 222 Ga. 817, 152 S.E.2d 752 (1966).

Reply to plaintiff's claim acts as estoppel to assert defects in notice. — When neither the pleadings nor the evidence reveals the slightest suggestion of restrictions on counsel for the city, the presumption arises that the city attorney had authority to bind the client by the solemn acknowledgment to plaintiff after receipt of plaintiff's letter giving notice of plaintiff's injury that, after investigation, the conclusion had been reached that the city was not liable. This amounts to an acknowledgment that this section had been complied with and the ante litem notice was sufficient, clearing the way for the filing of the complaint and estopping the city to deny the validity of the notice. City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265 (1969) (see O.C.G.A. § 36-33-5).

Evidence stricken when insufficient to show waiver or estoppel. — When allegations that the matter of plaintiff's injury was referred to a liability insurance carrier for investigation and settlement are insufficient to show waiver or any basis for estoppel, the allegations are improper in the pleadings of a tort action because the allegations are irrelevant to the issue and the allegations are properly stricken on motion. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339 (1969).

Issue of lack of notice must be raised at trial. — While the notice required before a suit against a city cannot be waived by the city authorities and is a condition precedent to recovery, a city which fails to raise the issue at trial cannot take advantage of the failure of a claimant to plead compliance with this section. Horton v. City of Macon, 144 Ga. App. 380, 241 S.E.2d 311 (1977) (see O.C.G.A. § 36-33-5).

Time of Notice and Action

Requirement of ante litem notice in this section is a statute of limitations. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339 (1969); City of Barnesville v. Powell, 124 Ga. App. 132, 183 S.E.2d 55 (1971); Barnum v. Martin, 135 Ga. App. 712, 219 S.E.2d 341 (1975) (see O.C.G.A. § 36-33-5).

Notice requirement subject to general laws tolling statute of limitations. — Requirement that the notice be given within six months from the date of the injuries, or else that the action therefor be forever barred, is itself a statute of limitations and subject to the general law of this state with respect to the tolling of statutes of limitations. City of Atlanta v. Barrett, 102 Ga. App. 469, 116 S.E.2d 654 (1960); Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

Former Code 1933, § 69-308 (see O.C.G.A. § 36-33-5) did not purport to curtail a two-year period of limitations, in actions for personal injuries, as provided in former Code 1933, § 3-1004 (see O.C.G.A. § 9-3-33). It required that, as claims relate to municipal corporations, ante litem claims prepared as fully set forth shall be presented to the governing authority for adjustment, and inhibits commencement of an action against municipalities until such claims shall have been presented. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902 (1941).

Second proviso of this section is exception to general rule that statute of limitations runs and continues to run from time that a complete cause of action arose; that is, from the time that plaintiff could have sued. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902 (1941) (see O.C.G.A. § 36-33-5).

Applicability of section providing for computation of time after commencement of action. — Ga. L. 1966, p. 609, § 6 (see O.C.G.A. § 9-11-6) provided for the computations of time applicable to proceedings after commencement of the action. It did not apply in determining the time within which an action may be insti-

tuted, or when it may be barred by a statute of limitations. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339 (1969).

Section contemplates statute of limitations for injuries to person. — Term statute of limitations as used in former Code 1933, § 69-308 (see O.C.G.A. § 36-33-5) so employed, though not expressly naming it, contemplated former Code 1933, § 3-1004 (see O.C.G.A. § 9-3-33). City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902 (1941).

Claim still pending when not considered within 30 days. — When a governing authority does not consider and act upon a claim within 30 days from the time the action was commenced, it must follow that the claim will still be pending before the governing authority. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902 (1941).

Accrual of subcontractor's claim. — In a claim by a subcontractor against a city under O.C.G.A. § 36-91-91, it was error to find that the subcontractor had not given the required ante litem notice within the time required by O.C.G.A. § 36-33-5; the subcontractor's claim accrued when the city paid the city's contractor, and the subcontractor had given the city notice shortly afterward. Jacks v. City of Atlanta, 284 Ga. App. 200, 644 S.E.2d 150 (2007), cert. denied, 2007 Ga. LEXIS 500 (Ga. 2007).

Suspension of statute of limitations while claim pending. — Proviso in this section respecting the suspension of the statute of limitations is to the effect that the running of the statute shall be suspended during the time that the demand for payment is pending before the authorities without action on the authorities' part. This necessarily means that so long as the claim for damages is pending before the governing authorities of the municipality, and the authorities have not acted upon the claim, the statute of limitations is suspended. City of Atlanta v. Truitt, 55 Ga. App. 365, 190 S.E. 369 (1937) (see O.C.G.A. § 36-33-5).

When a claim not having been acted on by the governing authority is still pending under the plain and unambiguous language of the second proviso of this section, the statute of limitations is suspended not merely for 30 days, no action on the claim having been taken, but after 30 days up to the institution of suit. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902 (1941) (see O.C.G.A. § 36-33-5).

It was not intended by the legislature that a municipality by refusing or omitting to act upon a claim could thereby delay or prevent institution of suit, and have the statute of limitations operative against the other party during the same period. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902 (1941).

Trial court erred by dismissing an arrestee's suit against a city alleging false arrest and other claims as being time-barred for not being filed within the two-year limitation period established in O.C.G.A. § 9-3-33 because the arrestee established that the arrestee had provided a timely ante litem notice, pursuant to O.C.G.A. § 36-33-5(b), to the city and had properly included evidence of the notice in the record as an exhibit to the appellate brief. Simon v. City of Atlanta, 287 Ga. App. 119, 650 S.E.2d 783 (2007).

Municipality's failure to answer claim no bar to action. — When it appeared from the petition in which the plaintiff sought to recover for personal injuries alleged to have been received by plaintiff as a result of a city's negligence in the maintenance of one of the city's streets, that the cause of action accrued January 23, 1938, and a claim therefor was filed with the governing authority of the defendant municipal corporation on January 19, 1940 (within the period of limitations), and that the defendant had never acted upon the claim, the plaintiff's cause of action had not become barred by the statute of limitations upon the filing of the suit on February 24, 1940. City of Rome v. Rigdon, 64 Ga. App. 625, 13 S.E.2d 709, aff'd, 192 Ga. 742, 16 S.E.2d 902 (1941).

Even though there was no evidence that plaintiff provided written notice of plaintiff's claim as is required by O.C.G.A. § 36-33-5 before filing suit since the trial court found that genuine issues of material fact remained regarding the city's liability for continuing trespass summary judgment was proper only as to

Time of Notice and Action (Cont'd)

those trespasses or nuisances which occurred more than four years prior to the filing of the complaint. Maxwell v. City of Chamblee, 212 Ga. App. 135, 441 S.E.2d 257, modified on other grounds, 264 Ga. 635, 452 S.E.2d 488 (1994).

Filing of suit after expiration of 30-day claim period. — While this statute only prevents suit being filed within the period of 30 days after the filing of the claim with the city authorities, the statute does not prevent the filing of the suit at any time after the expiration of the 30 days, irrespective of whether or not the city authorities have acted on the claim. City of Atlanta v. Truitt, 55 Ga. App. 365, 190 S.E. 369 (1937) (see O.C.G.A. § 36-33-5).

When period begins to run. — Time within which the notice must be given in order to comply with the statute begins to run on the day the breach of the city's duty occurred. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339 (1969) (see O.C.G.A. § 36-33-5).

Suit may not be filed until 30 days from filing of claim. — This section clearly prevents the filing of a suit against the municipality until after the expiration of 30 days from the filing of the claim in writing with the municipal authorities as required. Of course, this claim must be filed within the period of the statute of limitations, and before the plaintiffs' right of action is barred. City of Atlanta v. Truitt, 55 Ga. App. 365, 190 S.E. 369 (1937) (see O.C.G.A. § 36-33-5).

O.C.G.A. § 36-33-5 contemplates that suit shall not be brought until after the municipal authorities have acted upon the claim, or have failed to take action thereon within 30 days. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653 (1983).

Effect of only part of injury occurring within statutory period. — While the ante litem notice required to be given by this section is a prerequisite to the maintenance of an action against a city, if it appears from the notice that a part of the injury from which the claim arises occurred within the six-month period immediately preceding the notice, a general demurrer (now motion to dismiss) will not lie for noncompliance with this statute. City of Gainesville v. Moss, 108 Ga. App. 713, 134 S.E.2d 547 (1963), overruled on other grounds, City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488 (1994). (see O.C.G.A. § 36-33-5).

Municipality may answer claim after period elapsed. — Length of time in which to consider and act upon a claim against a municipal corporation under this section has reference to consideration and action by public officers as affecting the public interest. It is not declared that the governing authority may not consider and act upon the claim after 30 days have elapsed. It could be to the public interest to have longer than 30 days. The object is to facilitate adjustment without suit, and there is no express withdrawal of power to consider and act. Thus, the quoted part of the first proviso of this section is merely directory, and not a limitation of authority. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902 (1941) (see O.C.G.A. § 36-33-5).

Effect of disability. — When the person to whom the claim belongs under former Code 1933, § 69-308 (see O.C.G.A. § 36-33-5) is a person under disability as set forth in O.C.G.A. §§ 9-3-90 and 9-3-98, the limitation period does not begin to run until such time as the disability shall have been removed. City of Barnesville v. Powell, 124 Ga. App. 132, 183 S.E.2d 55 (1971); Barnum v. Martin, 135 Ga. App. 712, 219 S.E.2d 341 (1975); Lowe v. Pue, 150 Ga. App. 234, 257 S.E.2d 209 (1979); City of Fairburn v. Cook, 188 Ga. App. 58, 372 S.E.2d 245, cert. denied, 188 Ga. App. 911, 372 S.E.2d 245 (1988); Jacobs v. Littleton, 241 Ga. App. 403, 525 S.E.2d 433 (1999).

Mental and physical incapacitation tolls statute. — When a person has a cause of action for personal injuries against a municipal corporation for which, as a condition precedent to its enforcement, the person is required to give the statutory notice provided for in this section, and where, as a result of the occurrence giving rise to the cause of action, such person becomes mentally and physically incapacitated so as to be incapable of acting individually in carrying on the per-

son's business and in prosecuting the person's claim, the time limit for giving the statutory notice of the person's claim is tolled until such time as the person regains the capacity to act individually or until such time as a guardian is appointed and actually does act for the person, or until such time as one bona fide acting for the person as next friend actually gives the defendant municipality such notice. When a suit is brought thereafter by such next friend during the continuing disability of the plaintiff showing a notice given to the defendant more than 30 days prior to the filing thereof it is not subject to general demurrer (now motion to dismiss) on the ground that such notice was not timely given. City of Atlanta v. Barrett, 102 Ga. App. 469, 116 S.E.2d 654 (1960) (see O.C.G.A. § 36-33-5).

Plaintiff waiting past expiration of 30-day period protected. — When a plaintiff, though having the right to sue immediately after the expiration of the 30-day period, nevertheless waits longer pending action on the demand by the municipal authorities, the plaintiff does so by permission of the law as well as under guaranty of the law that so long as the claim was pending without action the statute would not run against the plaintiff. It necessarily follows that this case is not to be governed by the general rule as to computing the limitation period from the time the cause of action accrues, but that it is governed by the exception found in the second proviso to this section, so far as it relates to the statute of limitations. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902 (1941) (see O.C.G.A. § 36-33-5).

Effect of later discovery of additional injury. — Later discovery by plaintiff that plaintiff was suffering from additional injury from plaintiff's previous fall does not toll or extend the time for giving the requisite ante litem notice. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339 (1969).

Effect of period ending on Sunday. — If the statutory six-months period for the giving of the notice ends on a Sunday, it does not extend the time to the Monday following since the period is measured in months, not days. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339 (1969).

When the plaintiff failed to give notice to a municipality within six months of the claim's origin, the court did not err in dismissing the complaint. Perdue v. City Council, 137 Ga. App. 702, 225 S.E.2d 62 (1976); Anderson v. City of Glenwood, 893 F. Supp. 1086 (S.D. Ga. 1995).

When a city employee sued a city for defamation, intentional infliction of emotional distress, and false light/invasion of privacy, due to statements made about the employee by the city manager to a reporter, the employee's purported ante litem notices to the city, under O.C.G.A. § 36-33-5, were insufficient because: (1) some of the acts alleged occurred more than six months before the giving of notice; (2) neither of the employee's purported notices referred to the intentional infliction of emotional distress or false light/invasion of privacy claims; and (3) as to alleged defamatory statements made less than six months before the earliest purported notice, the notice did not state to whom the statements were made or their content. Rabun v. McCoy, 273 Ga. App. 311, 615 S.E.2d 131 (2005).

Case of continuing nuisance. — Notice to a city alleged to have been given within six months from the expiration of the four-year statute of limitations period during which the nuisance sued on continuously caused damage to the petitioner's property was given within the time prescribed by this section. Vickers v. City of Fitzgerald, 216 Ga. 476, 117 S.E.2d 316 (1960), overruled on other grounds, City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488 (1994) (see O.C.G.A. § 36-33-5).

Upon giving the six-month notice required by O.C.G.A. § 36-33-5, a property owner who incurs damage as a result of a continuing nuisance or trespass maintained by a municipality is entitled within the four-year period of limitations, to recover only those damages incurred during the six-months preceding the giving of such notice. The recovery of any damages incurred prior thereto would be barred, since no timely notice of claim therefor was given pursuant to this section; over-

Time of Notice and Action (Cont'd)

ruling Vickers v. City of Fitzgerald, 216 Ga. 476, 117 S.E.2d 316 (1960); City of Gainesville v. Moss, Ga. App. 713(2), 134 S.E.2d 547 (1963). City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488 (1994).

When a property owner failed to give any written notice to a city prior to filing a complaint for continuing trespass, summary judgment in favor of the city was proper as to the owner's claim for damages resulting from any continuing trespass "event" which occurred more than six months prior to the filing of the complaint. Any claim for damages resulting from a continuing trespass "event" which occurred within six months of the filing of the complaint was subject to a plea in abatement, rather than a motion seeking substantive adjudication. City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488 (1994).

Trial court properly granted summary judgment to the city on the claimant's tort claims arising from the back up of a sewer that flooded the claimant's home as no genuine dispute existed that the claimant did not file a written ante litem notice with the city within six months of the happening of the event that gave rise to the claim, the first flooding. The claimant was required to file written notice within that time even though the claimant alleged the flooding was a continuing nuisance as the city was entitled to notice arising from the first flooding so the city could attempt to fix the problem and the claimant's failure to timely give the city written notice meant the city could not be held liable. Cundy v. City of Smyrna, 264 Ga. App. 535, 591 S.E.2d 447 (2003).

Trial court properly determined that the property owners' claims of property damage, based on a continuing nuisance due to sewage backup, that occurred more than six months prior to the filing of their ante litem notice pursuant to O.C.G.A. § 36-33-5(b) were barred as untimely; although a prior letter could have constituted an ante litem notice, the four-year limitations period under O.C.G.A. § 9-3-30 had run prior to the institution of the lawsuit such that any claims in the six months prior to that letter were also barred. Davis v. City of Forsyth, 275 Ga. App. 747, 621 S.E.2d 495 (2005).

Disability of infancy is only removed when party affected reaches that party's lawful majority. Barnum v. Martin, 135 Ga. App. 712, 219 S.E.2d 341 (1975).

Statute will not run against minor represented in litigation by next friend or guardian ad litem. Barnum v. Martin, 135 Ga. App. 712, 219 S.E.2d 341 (1975).

Appointment of a guardian does not operate to start the statute of limitations running against the minor or the guardian in cases when the title to the cause of action is in the minor. Barnum v. Martin, 135 Ga. App. 712, 219 S.E.2d 341 (1975).

Notice to city employees not required. — O.C.G.A. § 36-33-5 requires notice only if the claim is against the municipality; the statute does not require ante litem notice to individual employees of a municipality. Jacobs v. Littleton, 241 Ga. App. 403, 525 S.E.2d 433 (1999).

Procedure

Necessity of alleging timely notice. — An action for damages for personal injuries against a municipality which fails to allege that the plaintiff's claim has been presented in writing to the municipality within six months of the occurrence of the injury is subject to general demurrer (now motion to dismiss). Jones v. City Council, 100 Ga. App. 268, 110 S.E.2d 691 (1959).

Substantial compliance must be alleged. — In a claim for money damages against a municipal corporation on account of injuries to person or property, the petition must affirmatively allege a compliance with the provisions of this section and unless it does so, it should be dismissed on demurrer (now motion to dismiss). Saunders v. City of Fitzgerald, 113 Ga. 619, 38 S.E. 978 (1901); Hooper v. City of Atlanta, 26 Ga. App. 221, 105 S.E. 723 (1921); Grooms v. City of Hawkinsville, 31 Ga. App. 424, 120 S.E. 807 (1923); Newton v. City of Moultrie, 37 Ga. App. 631, 141 S.E. 322 (1928) (see O.C.G.A. § 36-33-5).

While giving of notice is a condition precedent to bringing an action, the giving of such notice is at once part and parcel of the enforcement of the right and it is an

inseparable part of the bringing of the action. It is a part of the procedure for enforcing the right and as such it must affirmatively appear in the petition, either in the body thereof or by an exhibit thereto that such notice has been given. A petition which does not thus affirmatively show performance of the condition precedent is subject to general demurrer (now motion to dismiss). City of Atlanta v. Barrett, 102 Ga. App. 469, 116 S.E.2d 654 (1960); Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

Compliance with this section must be alleged in the complaint or else the complaint cannot state a cause of action. City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265 (1969) (see O.C.G.A. § 36-33-5).

Allegations of compliance are not subject to demurrer (now motion to dismiss) merely because no copy of a claim was attached to the petition. Habersham County v. Cornwall, 38 Ga. App. 419, 144 S.E. 55 (1928).

When no allegation in complaint that notice given to city, claim not maintainable. — O.C.G.A. § 36-33-5 requires written notice of the charges to the municipal corporation. When a complaint does not make any allegation that written notice was given to a city, no claim based on state law can be maintained against the city. Dague v. Riverdale Athletic Ass'n, 99 F.R.D. 325 (N.D. Ga. 1983).

Effect of allegation of notice in renewal petition. — An allegation in the renewal petition to the effect that prior to the institution of the former suit, which was against a municipal corporation, the plaintiff had served upon the defendant a written notice of claim, as provided by this section, in which the plaintiff claimed damages arising out of the same cause of action as that sued on in the renewal petition, is not an allegation as to the cause of action sued on in the former suit. Barber v. City of Rome, 39 Ga. App. 225, 146 S.E. 856 (1929) (see O.C.G.A. § 36-33-5).

Giving of notice is part of trial process. City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265 (1969).

Stipulation as to receiving notice. — In a nuisance suit by homeowners against the City of Atlanta with regard to recurrent flooding in a neighborhood, the trial court erred in granting the city's motion for judgment notwithstanding the verdict as to one homeowner based on the homeowners' alleged failure to put forth any evidence that those homeowners served the city with the statutorily required ante litem notice; because the record demonstrated that the city stipulated that one of the homeowners had provided ante litem notice, the trial court erred in granting a judgment notwithstanding the verdict as to that homeowner, but since there was no citation in the record as to the other homeowner providing ante litem notice to the city, granting of the city's motion for judgment notwithstanding the verdict as to that homeowner was proper. City of Atlanta v. Broadnax, 285 Ga. App. 430, 646 S.E.2d 279 (2007), cert. denied, 2007 Ga. LEXIS 615, 648 (Ga. 2007).

Failure to rebut allegation of notice in amended complaint. — When plaintiff, in plaintiff's amended complaint, alleged plaintiff gave the ante litem notice required by O.C.G.A. § 36-33-5, but the defendants failed to rebut the allegation in the amended complaint, the dismissal of the complaint under O.C.G.A. § 36-33-5 was improper. Harper v. Savannah Police Dep't, 179 Ga. App. 449, 346 S.E.2d 891 (1986).

Municipality required to consider claim. — After plaintiffs furnish a sufficient ante litem notice, the municipality is required to consider and act on the claim by settlement or denial. City of Claxton v. Claxton Poultry Co., 134 Ga. App. 679, 215 S.E.2d 718 (1975).

Evasive answer treated as admission. — Petition alleged that notice of claim for damages was given to the defendant municipal corporation. The defendant being chargeable with knowledge of the service upon it of this notice, and its answer to this allegation of the petition being evasive, the answer will be treated as an admission that the notice was given as alleged. Mayor of Madison v. Bearden, 22 Ga. App. 376, 96 S.E. 572, cert. denied, 22 Ga. App. 803 (1918).

Availability of discovery. — Further discovery procedures are available to the city on the same basis offered by law to

Procedure (Cont'd)

parties in all litigation proceedings. City of Claxton v. Claxton Poultry Co., 134 Ga. App. 679, 215 S.E.2d 718 (1975).

Municipality may not demand additional information or hearing. — There is no requirement contemplated by the statute that after receipt of a notice of claim the municipality may require additional information, or that the city may demand that the complainant appear before the city's council for an informational hearing. City of Claxton v. Claxton Poultry Co., 134 Ga. App. 679, 215 S.E.2d 718 (1975).

Compliance with section must be proven. — When, in an action for personal injuries against a city, compliance with this section is alleged, and such allegation is denied by the city, it is a necessary part of the plaintiff's case that plaintiff prove compliance with the statute, and on failure to show substantial compliance therewith it is not error to grant a nonsuit. City of Tallapoosa v. Brock, 138 Ga. 622, 75 S.E. 644 (1912); Bostwick v. City of Griffin, 141 Ga. 120, 80 S.E. 657 (1913) (see O.C.G.A. § 36-33-5).

When the trial record did not clearly establish that six-months' ante litem notice was not given, it was error to dismiss the claim against the municipal corporation. Brackett v. City of Atlanta, 149 Ga. App. 147, 253 S.E.2d 786 (1979).

Plaintiff bound by acts alleged in notice. — Petition on which the plaintiff seeks recovery against the city must be based on the claimed negligent transaction as set out in the notice given to the city, and plaintiff cannot proceed against the city upon acts of negligence different from those set out in that notice. City of Atlanta v. Harris, 52 Ga. App. 56, 182 S.E. 202 (1935).

Plaintiff's action for malicious prosecution was premature, as was plaintiff's ante litem notice to the defendant municipality, when plaintiff's indictment for theft of services had been dead-docketed, since termination of that prosecution in plaintiff's favor was a prerequisite to bringing of a malicious prosecution suit and dead-docketing of a case does not terminate a malicious prosecution case. Webster v. City of E. Point, 164 Ga. App. 605, 294 S.E.2d 588 (1982).

Premature suit grounds for abatement, not summary judgment. — Compliance with O.C.G.A. § 36-33-5 is a condition precedent to filing suit against the city, but the filing of suit against the city prior to the expiration of 30 days from the time of filing the claim is a matter that is properly raised as a plea in abatement and not a proper subject for summary judgment. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653 (1983).

Dismissal, rather than summary judgment, is appropriate in cases when the merits cannot be reached because of the plaintiff's failure to satisfy the notice requirements of O.C.G.A. § 36-33-5. Robinette v. Johnston, 637 F. Supp. 922 (M.D. Ga. 1986).

Dismissal of premature suit is without prejudice. — In cases in which the merits could not have been reached because of the failure of the plaintiff to satisfy a precondition, such as when a suit is filed prior to the expiration of 30 days from the time of filing the claim, the appropriate action is dismissal of the case on motion. Such a dismissal should be without prejudice, and, having no res judicata effect, would not bar the filing of another suit. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653 (1983).

Complaint properly amended after notice of claim given. — Claim by an association of taxicab owners that a city violated procedural due process by failing to provide the association's members with proper notice of violations of regulations was improperly dismissed for failure to comply with the ante-litem notice requirements of O.C.G.A. § 36-33-5 when the association failed to give notice of the claim before filing the association's original complaint, withdrew the claim from the complaint, gave notice under O.C.G.A. § 36-33-5, and then amended the original complaint to add the claim; the notification could not have been accomplished simply by amending the complaint after the action was filed, and to the extent that City of Atlanta v. Fuller, 164 S.E.2d 364 (1968) held otherwise, that case was overruled, but the procedure followed by the

association satisfied the procedural requirement of giving the city an opportunity to investigate the claim so as to determine whether to settle the claim without resorting to litigation, and the association was not procedurally barred from pursuing the association's claim for the alleged due process violations that occurred in the six months before the ante-litem notice was given. Atlanta Taxicab Co. Owners Ass'n v. City of Atlanta, 281 Ga. 342, 638 S.E.2d 307 (2006).

Effect of nonsuit on proof of notice. — In an action against a municipality for personal injuries, duly renewed after the grant of a nonsuit in a substantially similar former action in the superior court, the former judgment cannot be taken as having determined that the petition was insufficient, and that the plaintiff had no right to recover, because plaintiff's notice of injury to the municipality was legally insufficient under this section, especially since it is not made to appear that the sufficiency of the notice was in anywise determined or questioned in the former action by demurrer (now motion to dismiss) or otherwise, or that the nonsuit was granted for any reason other than that the evidence as to negligence was insufficient to authorize a recovery. Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353 (1936) (see O.C.G.A. § 36-33-5).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 598 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2567, 2568.

ALR. — Applicability of statute or ordinance requiring notice of claim for damages from injuries in street as affected by the conditions which caused the injury, 10 ALR 249.

Necessity of presenting claim against municipality for damaging property, 52 ALR 639.

Right of person not named as claimant in notice of claim to municipality to sustain action thereon, 63 ALR 1080.

Power of municipality to consent to judgment against itself, 67 ALR 1503.

Places within operation of statute or ordinance requiring notice of claim as a condition of municipal liability for injuries, 72 ALR 840.

Waiver of failure to give notice of claim or injury as condition of municipal liability for injury from defect in street or other public place, 82 ALR 749; 159 ALR 329; 65 ALR2d 1278.

What amounts to claim for personal injury within statute or ordinance requiring notice as condition of municipal liability, 97 ALR 118.

Requirement of notice of injury or claim as condition of action against municipality as applicable to injury or death of municipal officer or employee, 98 ALR 522.

Statute of limitations as applicable to actions by or against school districts, 98 ALR 1221.

Construction, application, and effect of statutory provisions avoiding effect of inaccuracy or omission in notice of injury required as condition of municipal liability, 103 ALR 298.

Power of city, town, or county or its officials to compromise claim, 105 ALR 170; 15 ALR2d 1359.

Continuing character of municipality's negligence and injury or damage therefrom as affecting requirement of notice to municipality, 116 ALR 975.

When statute of limitations commences to run as to action against municipality for damages to riparian premises by pollution of stream by discharge of sewage, 122 ALR 1509.

Necessity and sufficiency of statement as to amount of damages or compensation claimed, in notice or claim required as condition of municipal liability for injury to person or property, 136 ALR 1368.

Waiver of, or estoppel to assert, defects in notice of claim against county or municipality, 148 ALR 637.

Necessity and sufficiency of statement in notice of tort claim against county or municipality regarding identity of officers or employees chargeable with fault, 150 ALR 1054.

Waiver of, or estoppel to assert, failure to give notice of claim of injury as condi-

tion of liability of municipality, county, or other governmental agency for injury from defect in street, road, or other public place, 153 ALR 329; 65 ALR2d 1278.

Use of abbreviations of name of municipal body or private corporation in designating party to judicial proceedings, 167 ALR 1217.

Statute respecting presentation of liability claim against municipality as affecting its powers in that field, 170 ALR 237.

Power of city, town, or county or its officials to compromise claim, 15 ALR2d 1359.

Persons upon whom notice of injury or claim against municipal corporation may or must be served, 23 ALR2d 969.

Infancy or incapacity as affecting notice required as condition of holding municipality or other political subdivision liable for personal injury, 34 ALR2d 725.

Claimant's deposition or statement taken by municipality or other political subdivision as statutory notice of claim for injury or as waiver thereof, 41 ALR2d 883.

Effect of death as a result of injury on requirement of notice of claim against a city or other subordinate governmental unit, 51 ALR2d 1128.

Variance between notice of claim against municipality and proof as regards cause, manner, or locality of the accident, 52 ALR2d 966.

Sufficiency of notice of claim against municipality with respect to nature of defect and cause of accident, 62 ALR2d 397.

Sufficiency of notice of claim against municipality as regards description of personal injury or property damage, 63 ALR2d 863.

Sufficiency of notice of claim against municipality as regards identity, name, and residence of claimant, 63 ALR2d 911.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body, 65 ALR2d 1278.

Waiver of, or estoppel to rely upon, contractual limitation of time for bringing action against municipality or other political subdivision, 81 ALR2d 1039.

Necessity and sufficiency of plaintiff's pleading of having given requisite notice or presented claim to municipality or other public body, 83 ALR2d 1178.

Claim for contribution or indemnification from another tort-feasor as within provisions of statute or ordinance requiring notice of claim against municipality, 93 ALR2d 1385.

Power of municipal corporation to submit to arbitration, 20 ALR3d 569.

Amount of damages stated in notice of claim against municipality or county as limiting amount of recovery, 24 ALR3d 965.

Incapacity caused by accident in suit as affecting notice of claim required as condition of holding local governmental unit liable for personal injury, 44 ALR3d 1108.

Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity, 59 ALR3d 93.

Plaintiff's right to bring tort action against municipality prior to expiration of statutory waiting period, 73 ALR3d 1019.

Actual notice or knowledge by governmental body or officer of injury or incident resulting in injury as constituting required claim or notice of claim for injury — modern status, 7 ALR4th 1063.

Local government tort liability: minority as affecting notice of claim requirement, 58 ALR4th 402.

Insufficiency of notice of claim against municipality as regards statement of place where accident occurred, 69 ALR4th 484.

Complaint as satisfying requirement of notice of claim upon states, municipalities, and other political subdivisions, 45 ALR5th 109.

Persons or entities upon whom notice of injury or claim against state or state agencies may or must be served, 45 ALR5th 173.

Sufficiency of notice of claim against local political entity as regards time when accident occurred, 57 ALR5th 689.

Waiver of, or estoppel to assert, failure to give or defects in notice of claim against state or local political subdivision — modern status, 64 ALR5th 519.

36-33-6. Exemption of municipal property from levy and sale.

Property of a municipal corporation in use for the public or held for future use for the public is not subject to levy and sale under executions. All property held by a municipal corporation is presumptively for public use. (Civil Code 1895, § 750; Civil Code 1910, § 899; Code 1933, § 69-305.)

History of Code section. — This Code section is derived from the decision in Curry v. Mayor of Savannah, 64 Ga. 290 (1879).

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

All property of every kind held by municipality is presumptively for public use, and while perhaps the presumption may be overcome on proof of a holding for other purposes, as a mere investment to reap profits and save taxes, and with no ulterior purpose to apply the investment to the use or enjoyment of the public thereafter, yet the onus would be upon the plaintiff in execution to make that proof. Curry v. Mayor of Savannah, 64 Ga. 290, 37 Am. R. 74 (1879).

Municipal property held in proprietary capacity subject to sale. — As a general rule, property held by a municipality for governmental or public uses cannot be sold without express legislative authority, but must be devoted to the use and purpose for which the property was intended; the rule is otherwise as to property held by a municipality in the municipality's proprietary or private capacity if not devoted to any specific public use. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396 (1953).

Land not used for public use subject to sale. — Though land be bought for a public use, if not actually used for such purpose it cannot be said to be held by the municipality as a public trust, and may be sold. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396 (1953).

When property held by municipality for governmental or public use is abandoned as to such use, the municipality may sell the property without express legislative approval. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396 (1953).

Town schoolhouse is not subject to levy and sale by virtue of judgment and execution against the town, regardless of whether it is run as a free school, or rented to private teachers, who charge tuition; and consequently, if the house be destroyed by fire, the insurance therefor cannot be reached by garnishment by the judgment creditor. Fleishel & Kimsey v. Hightower, 62 Ga. 324 (1879); Walden v. Town of Whigham, 120 Ga. 646, 48 S.E. 159 (1904).

Cited in Pembroke State Bank v. Balboa Ins. Co., 144 Ga. App. 609, 241 S.E.2d 483 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Lease to private entity prohibited absent express authority. — Property held by a municipality for the public use and the benefit of the municipality's citizens cannot be leased to a private entity without express legislative authority in the absence of other applicable exceptions. 1992 Op. Att'y Gen. No. U92-9.

RESEARCH REFERENCES

C.J.S. — 63 C.J.S., Municipal Corporations, § 1153, 1154, 1162.

CHAPTER 34

POWERS OF MUNICIPAL CORPORATIONS GENERALLY

Sec.
36-34-1. Legislative intent.
36-34-2. Powers relating to administration of government generally.
36-34-3. Acquisition and operation of certain buildings and facilities; contracts with other political subdivisions for joint use.
36-34-4. Establishment of facilities and services for treatment of patients.
36-34-5. Acquisition and construction of water and sewage systems.
36-34-5.1. Lease agreements for providing library services.
36-34-5.2. Leases and contracts for operation and maintenance of botanical gardens in municipal corporations having population of more than 300,000.
36-34-5.3. Leases and contracts for operation and maintenance of public zoos in municipal corporations having population of more than 300,000.
36-34-6. Financing of facilities and services.
36-34-7. Powers supplemental.
36-34-8. Provisions of chapter general law; enactment of local or special laws on subject matters covered by chapter; effect of chapter upon amendment of municipal charters.

Cross references. — Constitutional provision authorizing General Assembly to provide for self-government of municipalities, Ga. Const. 1983, Art. IX, Sec. II, Para. II. Authority of governing body, planning agency, of municipality to approve plans for clearance, development, of blighted areas, § 8-4-5. Resolution of conflicts between this chapter and Ch. 35 of this title, § 36-35-8.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the issues, decisions prior to enactment of this chapter are included in the annotations for this chapter.

Municipality is a political division of the state, having for the municipality's object the administration of a portion of the power of government delegated to the municipality for that purpose. Cruise v. City of Rome, 94 Ga. App. 373, 94 S.E.2d 617 (1956); Spence v. Rowell, 213 Ga. 145, 97 S.E.2d 350 (1957) (decided under former Code 1933 § 22-103).

Nature of powers possessed by municipal corporation. — Municipal corporation possesses, and can exercise, the following powers, and no others: first, those granted in express words; second, those necessarily or fairly implied; third, those essential to the declared objects and purposes of the corporation — not simply convenient, but indispensable. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503 (1938) (decided under former law).

Powers granted to municipal corporations are to be strictly construed, and if there is any reasonable doubt of the existence of the power, it will be resolved against the municipality. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396 (1953) (decided under former Code 1933, § 69-203).

Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the municipal corporation. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503 (1938) (decided under former law).

Powers of municipal corporation

are fixed by the municipality's charter and by general statutory authority relating to such corporations, and the municipal corporation may exercise such powers as are expressly delegated to the municipality, as well as those which would be reasonably implied from the express terms of the charter. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396 (1953) (decided under former Code 1933, § 69-203).

Duty to protect citizen. — Municipality, like the state as a whole, owes as the municipality's paramount duty to the citizen the protection of the citizen's person and property. Cruise v. City of Rome, 94 Ga. App. 373, 94 S.E.2d 617 (1956) (decided under former law).

Municipal corporation is without authority, not only to contract or incur liability, but to donate the municipality's money or property, unless authorized by the municipality's charter or some general law of the state. Such a power is not conferred by a general welfare provision in the charter. Miller v. City of Cornelia, 188 Ga. 674, 4 S.E.2d 568 (1939) (decided under former law).

Municipalities have right to control burials in public cemeteries. — Municipalities, under authority to protect the health of a municipality's citizens, have the right to control, by reasonable regulations, the interment and disinterment of bodies in public or municipal cemeteries. Mayor of Savannah v. Colding, 181 Ga. 260, 181 S.E. 821 (1935) (decided under former law).

Cited in City of Athens v. McGahee, 178 Ga. App. 76, 341 S.E.2d 855 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Municipality cannot, even with approval by referendum election, construct building for rental to private industry as municipalities have no authority to enter into business. 1954-56 Op. Att'y Gen. p. 489 (decided under former law).

RESEARCH REFERENCES

ALR. — Power of municipality to exact license tax or fee from interurban carrier, 31 ALR 594.

Power of municipal corporation to submit to arbitration, 40 ALR 1370.

Power of municipal corporation or authorities to employ detective, 45 ALR 737.

Delegation by municipality of its powers as to building regulations, 46 ALR 88.

Power of municipality to acquire and operate ice plant, 46 ALR 836; 68 ALR 872.

Power of municipal corporation to fix rates of motor vehicles for hire, 65 ALR 1364.

Power of municipality as to billboards and outdoor advertising, 72 ALR 465.

Power of municipal corporation to employ attorney, 83 ALR 135.

Power of municipality to classify for purposes of taxation as affected by classification made by state or its failure to classify, 110 ALR 1203.

Power of municipality to impose chain store license tax, 111 ALR 596.

Delegation to board or officer of police power to require vacation, destruction, or repair of individual building deemed by such officer or board unsafe or insanitary, apart from noncompliance with specific regulations, 114 ALR 446.

Right of municipality to invoke constitutional provisions against acts of state legislature, 116 ALR 1037.

Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 ALR 997.

Municipal ordinance relating to persons engaged in specified occupations or professions as applicable to officials or employees of state or political subdivision other than the municipality, 123 ALR 1383.

Municipal license as affecting municipality's exercise of police power adversely to licensee, 124 ALR 523.

Power of municipal corporation to contribute financially to municipal league or other organizations of a similar character, 169 ALR 1230.

Power of municipality to sell, lease, or

mortgage public utility plant or interest therein, 61 ALR2d 595.

Power of municipal corporation to submit to arbitration, 20 ALR3d 569.

Power of municipal corporation to lease or sublet property owned or leased by it, 47 ALR3d 19.

Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 ALR3d 998.

36-34-1. Legislative intent.

It is declared to be the intention of the General Assembly to vest certain general powers in the governing body of each of the municipal corporations of this state, such powers to be in addition to or cumulative of those which any municipal corporation may now have under its charter or any other special or general law. It is the purpose of this grant of general powers:

(1) To provide authority for all municipal corporations to exercise certain common functions of local government;

(2) To provide for local self-government to the extent of the powers granted; and

(3) To relieve the necessity for special legislative action by the General Assembly to the extent of the powers granted in this chapter. (Ga. L. 1962, p. 140, § 1.)

Law reviews. — For article, "The Municipal Home Rule Act of 1965," see 3 Ga. St. B.J. 333 (1967). For annual survey of construction law, see 56 Mercer L. Rev. 109 (2004).

JUDICIAL DECISIONS

The 1962 Home Rule Act was intended to allow municipalities to exercise certain powers themselves, not to define the means by which the cities would and could manage a municipalities' affairs. Sadler v. Nijem, 251 Ga. 375, 306 S.E.2d 257 (1983).

No municipal corporations possess inherent powers; instead, the corporations possess only such powers as are expressly delegated by the legislature. Evidence of express delegation by the legislature is found in the charter of each municipality. Palmer v. Hall, 380 F. Supp. 120 (M.D. Ga. 1974), modified, 517 F.2d 705 (5th Cir. 1975).

Powers and authority of mayor and aldermen derived from city charter. — Legislature has not enacted general laws giving any general powers to either mayors or aldermen of municipal corporations. Therefore, the powers and authority of the mayor and aldermen are derived from the charter of the city. Palmer v. Hall, 380 F. Supp. 120 (M.D. Ga. 1974), modified, 517 F.2d 705 (5th Cir. 1975).

Conflicting special law unconstitutional. — Georgia Laws 1968, p. 2953, providing for collective bargaining for Chatham County public employees, violates Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV), since it is a special law dealing with matters provided for by the general law under Ga. L. 1962, p. 140, §§ 1 and 2 (see O.C.G.A. §§ 36-34-1 and 36-34-2). Local 574, Int'l Ass'n of Firefighters v. Floyd, 225 Ga. 625, 170 S.E.2d 394 (1969).

Taxpayer actions. — Local government provisions applicable to municipal corporations do not provide for derivative actions by taxpayers in the name of a municipality. Taxpayers may bring direct actions in mandamus to compel or enjoin

city officials to perform a public duty or sue city officials for damages in connection with the unlawful expenditure of public funds with any recovery to be paid to the city. Common Cause/Ga. v. Campbell, 268 Ga. App. 599, 602 S.E.2d 333 (2004), aff'd, 279 Ga. 480, 614 S.E.2d 761 (2005).

Cited in Allison v. Medlock, 224 Ga. 37, 159 S.E.2d 384 (1968); Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971); Paige v. Gray, 437 F. Supp. 137 (M.D. Ga. 1977); CSX Transp., Inc. v. Garden City, 196 F. Supp. 2d 1288 (S.D. Ga. 2002).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 10.

C.J.S. — 62 C.J.S., Municipal Corporations, § 139 et seq.

36-34-2. Powers relating to administration of government generally.

In addition to the other powers which it may have, the governing body of any municipal corporation shall have the following powers, under this chapter, relating to the administration of municipal government:

(1) The power to establish municipal offices, agencies, and employments;

(2) The power to define, regulate, and alter the powers, duties, qualifications, compensation, and tenure of all municipal officers, agents, and employees, provided that the members of the municipal governing body shall not have the right to fix or change their own terms or the terms of their successors, nor to alter their own salaries or compensation, except pursuant to the authority of Code Section 36-35-4, nor to alter such duties or responsibilities as are specifically given to a particular elective official by charter;

(3) The power to authorize any of the officers, agents, and employees of the municipal corporation to serve, in any manner prescribed by applicable law, any process, summons, notice, or order on all persons, as defined in Code Section 1-3-3 therein named, when:

(A) The paper to be served arises out of or relates to an activity or condition conducted or maintained by such person within the territorial jurisdiction of the municipal corporation in violation of an applicable law or ordinance; and

(B) The paper to be served originates in or is issued under the authority of the department or branch of municipal government employing such officer, agent, or employee.

Where any such paper names one or more persons who reside outside the territorial jurisdiction of the municipal corporation, the several sheriffs, marshals, and constables of the several counties of this state

are authorized and directed to serve any such paper and make appropriate return of such service by them, as other process is served and returned, on such named persons residing in their respective jurisdictions, upon receipt of a written request to make such service, for the fees allowed for service of process issued by the superior courts of this state;

(4) The power to establish merit systems, retirement systems, and insurance plans for all municipal employees and to establish insurance plans for school employees of independent municipal systems and to provide the method or methods of financing such systems and plans;

(5) The power to contract with any state department or agency or any other political subdivision for joint services or the exchange of services; to contract with such agencies or subdivisions for the joint use of facilities or equipment; and to contract with any state agency or political subdivision to perform any service or execute any project for such agency or subdivision in which the municipal corporation has an interest;

(6) The power to legislate, regulate, and administer all matters pertaining to absentee voting in municipal elections; and

(7)(A) The power to grant franchises to or make contracts with railroads, street railways, or urban transportation companies, electric light or power companies, gas companies, steam-heat companies, telephone companies, water companies, and other public utilities for the use and occupancy of the streets of the city, for the purpose of rendering utility services, upon such conditions and for such time as the governing authority of the municipal corporation may deem wise and subject to the Constitution and the general laws of this state.

(B) The amount of fees collected from customers of public utilities or companies as a result of franchise agreements or contracts authorized by this paragraph shall be itemized on bills or invoices transmitted to customers for utility services. The requirements of this subparagraph shall not apply to fees that are included in the system-wide charges or base rates of a public utility or company subject to a franchise agreement or contract. (Ga. L. 1962, p. 140, § 2; Ga. L. 1973, p. 778, § 2; Ga. L. 1976, p. 188, § 1; Ga. L. 1979, p. 645, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1989, p. 812, § 1; Ga. L. 1992, p. 2122, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 1995, p. 1189, § 1; Ga. L. 2007, p. 164, § 1/HB 107; Ga. L. 2012, p. 847, § 2/HB 1115.)

The 2012 amendment, effective July 1, 2012, deleted "and telegraph" following "telephone" in subparagraph (7)(A).

Cross references. — Home rule powers of municipalities, Ga. Const. 1983, Art. IX, Sec. II, Paras. I-VII. Extent of interest obtainable by condemnor upon condemnation, § 22-2-85. Taxation of special franchises, § 48-5-420 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "compensation" was substituted for "compensations" in paragraph (2).

Law reviews. — For article, "The Use of the Police Power by Local Governments and Some Problems of Intergovernmental Relations," see 8 J. of Pub. L. 109 (1959). For article, "Local Government and Contracts that Bind," see 3 Ga. L. Rev. 546 (1969).

JUDICIAL DECISIONS

Analysis

General Consideration
Public Employees
Franchises

General Consideration

Editor's notes. — In light of the similarity of the issues, decisions prior to enactment of this section are included in the annotations for this section.

Section not retrospective in operation. — There is no intent expressed in paragraph (7) of O.C.G.A. § 36-34-2 or any of the remaining portions of that section which express an intent that the section be retrospective in the section's operation or act as a ratification for prior acts of a municipality. Blue Ridge Tel. Co. v. City of Blue Ridge, 161 Ga. App. 452, 288 S.E.2d 705 (1982).

Municipal corporation is a political division of the state, and is a public corporation, having for the municipality's object the administration of a portion of the power of government delegated to the municipality for such purpose. It is a creature of the General Assembly and the municipality's charter powers may be enlarged, lessened, or completely withdrawn at the will of the municipality's creator. Spence v. Rowell, 213 Ga. 145, 97 S.E.2d 350 (1957) (decided under former Code 1933, § 22-103).

Nature of powers possessed by municipal corporation. — Municipal corporation possesses, and can exercise, the following powers, and no others: first, those granted in express words; second, those necessarily or fairly implied; third, those essential to the declared objects and purposes of the corporation — not simply convenient, but indispensable. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503 (1938) (decided under former law).

Freedom to interpret powers. — Grant of authority under O.C.G.A. § 36-34-2 does not define the means by which the cities would and could manage the city's affairs or prohibit municipal governing authorities from choosing how such powers shall be exercised. City of Atlanta v. McKinney, 265 Ga. 161, 454 S.E.2d 517 (1995).

Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the municipal corporation. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503 (1938) (decided under former law).

Disposition of business by resolution. — Proper disposition of administrative business by council of municipal corporation is by resolution. Allen v. Wise, 204 Ga. 415, 50 S.E.2d 69 (1948) (decided under Ga. L. 1898, pp. 255, 256).

Estoppel of council to question legality of election. — When a council by mistake of law duly advertised and held an election at the wrong time, participating as candidates themselves, the council are estopped from bringing an action quo warranto to question legality. Dorsey v. Ansley, 72 Ga. 460 (1884) (decided under Ga. L. 1872, p. 19).

City cannot regulate construction of substation on power company's property. — City did not have the au-

thority, under O.C.G.A. § 36-34-2(7), to regulate the construction of a power substation on property owned by the power company since the city's authority was limited to a utility's use of city property. City of Buford v. Ga. Power Co., 276 Ga. 590, 581 S.E.2d 16 (2003).

Cited in Georgia Power Co. v. Zimmerman, 133 Ga. App. 786, 213 S.E.2d 12 (1975); Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268 (1978); Brown v. City of E. Point, 152 Ga. App. 801, 264 S.E.2d 267 (1979); City of Athens v. McGahee, 178 Ga. App. 76, 341 S.E.2d 855 (1986); City of LaGrange v. Troup County Elec. Membership Corp., 200 Ga. App. 418, 408 S.E.2d 708 (1991); Clark v. City of Zebulon, 156 F.R.D. 684 (N.D. Ga. 1993); Angell v. Hart, 232 Ga. App. 222, 501 S.E.2d 594 (1998).

Public Employees

Special legislation may not place restrictions in the form of mandatory collective bargaining upon the unlimited powers granted by Ga. L. 1962, p. 140, § 2 (see O.C.G.A. § 36-34-2) Local 574, Int'l Ass'n of Firefighters v. Floyd, 225 Ga. 625, 170 S.E.2d 394 (1969).

Conflicting special law unconstitutional. — Georgia Laws 1968, p. 2953, providing for collective bargaining for Chatham County public employees, violates Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV) since it is a special law dealing with matters provided for by the general law under Ga. L. 1962, p. 140, §§ 1 and 2 (see O.C.G.A. §§ 36-34-1 and 36-34-2). Local 574, Int'l Ass'n of Firefighters v. Floyd, 225 Ga. 625, 170 S.E.2d 394 (1969).

Collective bargaining not required. — Powers of a municipality to regulate terms of employment may be executed by a city in any manner the city chooses, in the exercise of the city's nondelegable discretion. A city is not required to bargain collectively with any person or organization as to those powers. Local 574, Int'l Ass'n of Firefighters v. Floyd, 225 Ga. 625, 170 S.E.2d 394 (1969).

Franchises

Granting by municipality of franchise to distribute electricity in municipality is not an ultra vires act. Singer v. City of Cordele, 225 Ga. 323, 168 S.E.2d 138 (1969).

When power to grant franchises stems from paragraph (7) of Ga. L. 1962, p. 140, § 2 (see O.C.G.A § 36-34-2), there is no violation of former Code 1933, § 69-202 (see O.C.G.A. § 36-30-3). City of Lithonia v. Georgia Pub. Serv. Comm'n, 238 Ga. 339, 232 S.E.2d 832 (1977).

Municipality can set conditions. — Municipality has the authority to condition the grant of a franchise upon requirements as the municipality deems wise. Athens-Clarke County v. Walton Elec. Membership Corp., 265 Ga. 229, 454 S.E.2d 510 (1995).

Authority of city to charge franchise fee. — In O.C.G.A. § 46-3-14(b), nothing in the first sentence purports to prohibit a city from conditioning the city's grant of a street franchise to an electric company upon the payment of a reasonable franchise fee, and the second sentence is a statutory preservation of the right of a "municipality" under paragraph (7) of O.C.G.A. § 36-34-2 to charge "any secondary supplier" a franchise fee, even when the municipality itself is also the primary supplier. City of Calhoun v. North Ga. Elec. Membership Corp., 264 Ga. 205, 443 S.E.2d 469 (1994).

Effect of rate schedule compatible with exercise of municipality's discretion in granting franchises. — Jurisdiction of the Public Service Commission stems from the Georgia Constitution. Therefore, any indirect effect which a rate schedule might have upon a municipality's exercise of the municipality's discretion in granting franchises is entirely compatible with the authority granted the municipalities by paragraph (7) of this section. City of Lithonia v. Georgia Pub. Serv. Comm'n, 238 Ga. 339, 232 S.E.2d 832 (1977) (see O.C.G.A. § 36-34-2).

Electric company must show right to erect poles in land of highway. — To justify setting up the company's poles in the land of a highway, a company which uses poles and wires in the transmission of electric currents must show that the company has acquired the right to do so, either by consent or condemnation from the owner of the soil. The designation by

Franchises (Cont'd)

the municipality of the street where the poles may be set up is not enough. Donalson v. Georgia Power & Light Co., 175 Ga. 462, 165 S.E. 440 (1932).

Acquiescence in use of streets by telephone company. — Acquiescence of the city during the period from the 1962 enactment of paragraph (7) of O.C.G.A. § 36-34-2 to the date of the judgment in the trial court, the city's acquiescence in the use of the city streets and the operation of the telephone system, is sufficient conduct on the part of the city so as to estop the city from denying the authority of the defendant telephone company to use the city streets during that period; but as the city's acquiescence did not carry any promise, explicit or implicit, that the city would allow this fait accompli to continue for any definite time or for any time into the future whatsoever, there is no basis upon which the city may be restrained from exercising the city's powers to abrogate this present informal arrangement. Blue Ridge Tel. Co. v. City of Blue Ridge, 161 Ga. App. 452, 288 S.E.2d 705 (1982).

OPINIONS OF THE ATTORNEY GENERAL

City may establish personnel department and merit board without the necessity of special Acts of the General Assembly. 1969 Op. Att'y Gen. No. 69-310.

City may set up retirement system for city employees without necessity of amending city charter. 1970 Op. Att'y Gen. No. U70-80.

State law does not prohibit grant of franchise to community antenna television system by municipality; cable television is not regulated by the Georgia Public Service Commission. 1970 Op. Att'y Gen. No. U70-190.

State not exempt from franchise fee when paid indirectly. — While the state might not be required to pay a franchise fee or other tax directly to a city, in those situations where the state is paying money to a company, and that company is in turn remitting the money to the city as a franchise fee, it cannot be said that the state is the entity which is subject to the legal incidence of the tax so that it could successfully assert an exemption from such fees. 1976 Op. Att'y Gen. No. 76-42.

Payment for utilities by department unaffected by taxes paid to municipality. — Obligation of the Department of Administrative Services to pay for utilities at an established rate is not affected by the fact that the sums paid may include or reflect taxes paid by the provider of the services to a municipality. 1976 Op. Att'y Gen. No. 76-42.

Municipal contributions to day care center. — Unless a provision in the city charter allows such an expenditure, a city may not contribute to a day care center. 1984 Op. Att'y Gen. No. U84-14.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 163 et seq., 224, 236.

C.J.S. — 29 C.J.S., Election, § 330 et seq. 37 C.J.S., Franchises, §§ 27, 28. 62 C.J.S., Municipal Corporations, §§ 143, 178, 416, 417, 490 et seq. 63 C.J.S., Municipal Corporations, § 863 et seq. 64 C.J.S. Municipal Corporations, 1169, 1171, 1178, 1180, 1181, 1192, 1292 et seq., 1896 et seq.

ALR. — Power of municipality to assume the duty of providing and maintaining railroad crossings, 1 ALR 316.

Power of public service commission to increase franchise rates, 3 ALR 730; 9 ALR 1165; 28 ALR 587; 29 ALR 356.

Power of municipal council to correct its minutes, 3 ALR 1308.

Power of municipality to exact license tax or fee from interurban carrier, 31 ALR 594.

Power of municipal corporation to take out liability insurance, 33 ALR 717.

Forfeiture of street railway franchise for breach of condition, 34 ALR 1413.

Power of municipal corporation to purchase or charter a boat or barge, 39 ALR 1332.

Power of municipal corporation to submit to arbitration, 40 ALR 1370.

Liability of municipal corporation upon implied contract for use of property which it received under an invalid contract, 42 ALR 632.

Liability of municipality as affected by license issued by municipal officer, 42 ALR 1208.

Power of municipal corporation or authorities to employ detective, 45 ALR 737.

Liability of municipal corporations and their licensees for the torts of independent contractors, 52 ALR 1012.

Power of municipality to transfer or assign its right to enforce assessment or lien for local improvements, 55 ALR 667.

Power of municipality to maintain public hack stand on property of carrier, 56 ALR 767.

Power of municipal corporation to fix rates of motor vehicles for hire, 65 ALR 1364.

Power of board to appoint officer or make contract extending beyond its own term, 70 ALR 794; 149 ALR 336.

Duration of street franchise without fixed term, beyond the life of the grantee, 71 ALR 121.

Discretion of civil service commission as regards promotional examinations for eligible list, 75 ALR 1234.

Power to include in municipal contract or proposal therefor, provisions designed to relieve local unemployment, or encourage local industries, 81 ALR 255.

Power of municipality to fix specific scale of wages or hours for employees of contractors or subcontractors for municipal contracts, 81 ALR 349; 129 ALR 763.

Power of municipal corporation to employ attorney, 83 ALR 135.

Power of municipality to extend license regulation or occupation tax beyond its own territorial limits, 86 ALR 917.

Rights, duties, and remedy in respect of leasing or hiring public property to private person for occasional use, 86 ALR 1175.

Estoppel of municipality to deny that it gave its consent to street franchise, 89 ALR 619.

Profit factor in determining rates for municipally owned or operated public utility, 90 ALR 700.

Disposition of revenues from operation of revenue-producing enterprise owned by municipal corporation, 103 ALR 579; 165 ALR 854.

Power of municipal corporation, as adjunct of public utility service furnished by it, to sell to consumers equipment necessary or convenient for use of the service, 108 ALR 1454.

Power of municipality to classify for purposes of taxation as affected by classification made by state or its failure to classify, 110 ALR 1203.

Right and duty of city and public utility upon expiration by limitation of street franchise, 112 ALR 625.

Power of county or municipality to exempt from taxation or otherwise aid or subsidize private enterprises conducted for recreational, exhibition, or entertainment purposes, 116 ALR 889.

Right of municipality to invoke constitutional provisions against Acts of state legislature, 116 ALR 1037.

Right of municipality or other political subdivision to enforce against other party contract which was in excess of former's power, or which did not comply with the conditions of its power in that regard, 122 ALR 1370.

Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 ALR 997.

Municipal ordinance relating to persons engaged in specified occupations or professions as applicable to officials or employees of state or political subdivision other than the municipality, 123 ALR 1383.

Municipal license as affecting municipality's exercise of police power adversely to licensee, 124 ALR 523.

Inclusion of different franchise rights or purposes in same ordinance, 127 ALR 1049.

Power of municipality to agree to abide by conditions or regulations imposed by federal authority in respect of construction, maintenance, or operation of a municipal public utility plant or enterprise, 128 ALR 620.

Public regulation of dry cleaning and dyeing establishments, 128 ALR 678.

Statute relating to municipal fire departments as interference with local self-government, 141 ALR 903.

Implied or inherent power of municipal corporation to sell its real property, 141 ALR 1447.

Validity, construction, and application of municipal ordinances relating to loading or unloading passengers by interurban buses on streets, 144 ALR 1119.

Certificates by state authorizing operation of motorbus lines over section of highway as affected by its subsequent annexation to city, 154 ALR 1440.

Governmental body's right to enjoin breach of contract for unique or extraordinary services, 161 ALR 881.

Power of municipal corporation to contribute financially to municipal league or other organizations of a similar character, 169 ALR 1230.

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates, 4 ALR2d 595.

Power of city, town, or county or their officials to compromise claim, 15 ALR2d 1359.

Liability of municipality in damages for its refusal to grant permit, license, or franchise, 37 ALR2d 694.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 ALR2d 595.

Power of municipal corporation to submit to arbitration, 20 ALR3d 569.

Right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute, 33 ALR3d 397.

Validity and construction of municipal ordinances regulating community antenna television service (CATV), 41 ALR3d 384.

Standing to contest award of, or acquisition of right to operate, cable TV certificate, license, or franchise in state court action, 78 ALR3d 1255.

Validity, construction, and application of enactments relating to requirement of residency within or near specified governmental unit as condition of continued employment for policemen or firemen, 4 ALR4th 380.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway, 51 ALR4th 602.

Validity, construction, and application of state enactment, order, or regulation expressly prohibiting sexual orientation discrimination, 82 ALR5th 1.

36-34-3. Acquisition and operation of certain buildings and facilities; contracts with other political subdivisions for joint use.

In addition to the other powers it may have, any municipal corporation shall have the power, in the interest of the health and general welfare, to accept by gift, acquire, construct, lease, own, regulate, operate, improve, open, close, or extend public streets, alleys, sidewalks, parks, swimming pools, golf courses, recreation grounds, airports, airfields, parking areas, parking buildings, athletic fields, grandstands and stadia buildings used or useful for sports, buildings used or useful for housing fairs and exhibits, buildings for educational purposes, libraries, buildings used or useful for poultry and livestock shows and exhibits, and buildings used or useful for public amusement purposes, together with facilities or buildings used for any combination of the above. Any municipal corporation may, under this chapter, contract with any other political subdivision for the joint use of any of such facilities. (Ga. L. 1962, p. 140, § 4.)

Cross references. — Municipal public libraries generally, § 20-5-20 et seq.

Law reviews. — For article, "Local Government and Contracts that Bind," see 3 Ga. L. Rev. 546 (1969). For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions prior to enactment of this section are included in the annotations for this Code section.

This power is broad enough to authorize the governing authorities to exercise poor judgment so long as it is the governing authorities' judgment and is not capricious and arbitrary. Goodman v. City of Atlanta, 246 Ga. 79, 268 S.E.2d 663 (1980).

Property dedicated to particular purpose cannot by the dedicatee, a municipality, be diverted from that purpose, except under the right of eminent domain. Donalson v. Georgia Power & Light Co., 175 Ga. 462, 165 S.E. 440 (1932) (decided under former law).

Occupant of city lot does not have any right in the name of an abutting municipal street as will preclude city governing authority from renaming the public thoroughfare. The only justiciable issue is whether the legislative action (naming or renaming the street) was taken for the public health or welfare or was, instead, accomplished arbitrarily, capriciously, maliciously, or with intent to cause injury to an abutting property owner or the general public. Goodman v. City of Atlanta, 246 Ga. 79, 268 S.E.2d 663 (1980).

Municipal corporation is without power to vacate a public thoroughfare unless authority to do so is conferred upon the municipal corporation in express terms or by necessary implication. City of Statesboro v. Dorman, 203 Ga. 25, 45 S.E.2d 403 (1947) (decided under former law).

Cited in Campbell v. City of Columbus, 224 Ga. 279, 161 S.E.2d 299 (1968); Jonesboro Area Athletic Ass'n v. Dickson, 227 Ga. 513, 181 S.E.2d 852 (1971); City of Gainesville v. Pritchett, 129 Ga. App. 475, 199 S.E.2d 889 (1973).

OPINIONS OF THE ATTORNEY GENERAL

Regulation of vehicular weights. — By establishing truck routes, a city may effectively regulate the amount of weight which may be carried on designated streets on a municipal street system. 1982 Op. Att'y Gen. No. 82-20.

Any city or county ordinances purporting to regulate vehicular weights must not exceed maximum weights permitted by O.C.G.A. § 32-6-26. 1982 Op. Att'y Gen. No. 82-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 192, 470 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 1143 et seq. 64 C.J.S., Municipal Corporations, §§ 1169, 1171.

ALR. — Liability of municipal corporation upon implied contract for use of property which it received under an invalid contract, 42 ALR 632.

Public "comfort stations," 42 ALR 891; 55 ALR 472.

Measure of damages or compensation where property is taken to widen street, 64 ALR 1513.

Power to include in municipal contract or proposal therefor, provisions designed to relieve local unemployment, or encourage local industries, 81 ALR 255.

Aggregate of rent for entire period of

lease of property to municipality as present indebtedness for purposes of condition of incurring, or limitation of amount of, municipal debt, 112 ALR 278.

Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 ALR 997.

Auditorium or stadium as public purpose for which public funds may be expended or taxing power exercised, 173 ALR 415.

Necessity for adhering to statutory procedure prescribed for vacation, discontinuance, or change of route of street or highway, 175 ALR 760.

Granting or taking of lease of property by municipality as within authorization of purchase or acquisition thereof, 11 ALR2d 168.

Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 ALR3d 998.

Liability to one struck by golf ball, 53 ALR4th 282.

36-34-4. Establishment of facilities and services for treatment of patients.

In addition to the other powers it may have, the governing body of any municipal corporation may provide for the general health and welfare by establishing hospitals and clinics for the reception and treatment of charitable and pay patients. It shall have the power to contract with any state agency or political subdivision of this state to provide joint facilities or services for the care and treatment of patients. (Ga. L. 1962, p. 140, § 3; Ga. L. 1992, p. 6, § 36.)

Cross references. — Hospital authorities, T. 31, C. 7, A. 4. Care of indigent and elderly patients, T. 31, C. 8.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 10, 11. 40A Am. Jur. 2d, Hospitals and Asylums, § 42 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 481.

C.J.S. — 39A C.J.S., Health and Environment, §§ 4, 6. 41 C.J.S., Hospitals, § 11 et seq.

ALR. — Power of municipality to acquire and operate ice plant, 68 ALR 872.

Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 ALR 997.

Municipal power to condemn land for cemetery, 54 ALR2d 1322.

Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 ALR3d 998.

36-34-5. Acquisition and construction of water and sewage systems.

(a) In addition to the other powers which it may have, any municipal corporation shall have the power under this chapter:

(1) To acquire by gift, by purchase, or by the exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend any water system or sewage system, or both, within the municipal corporation;

(2) To acquire by gift, by purchase, or by the exercise of the right of eminent domain any lands, easements, rights in lands, and water rights in connection therewith;

(3) To operate and maintain any such systems for its own use and for:

(A) Public and private persons within the territorial boundaries of the municipal corporation who use the system; or

(B) Persons to whom the system is made available at the property owned by such persons; and

(4) To prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities:

(A) Furnished to persons or users; or

(B) Made available by such systems to the property owner at such owner's property. When services are available but not used, the maximum rates, fees, tolls, or other charges imposed shall not exceed the minimum charge or fee imposed on a user of such system.

(b) The provisions of subparagraphs (a)(3)(B) and (a)(4)(B) of this Code section shall apply with respect to an individual residential property owner only in the case of a municipality or public water system or project thereof that is exempted from the provisions of subsections (a) and (b) of Code Section 36-60-17.1 pursuant to subsection (c) of such Code section. (Ga. L. 1962, p. 140, § 6; Ga. L. 1985, p. 1393, § 1; Ga. L. 2007, p. 737, § 1/HB 247.)

Cross references. — Powers and duties of Environmental Protection Division of Department of Natural Resources pertaining to sewage systems, waste treatment works, § 12-5-20 et seq. Contracts between Department of Natural Resources and municipalities pertaining to furnishing of water supplies, § 12-5-72. Powers and duties of Environmental Protection Division of Department of Natural Resources with regard to public water systems, § 12-5-170 et seq. Permits for operation of solid waste handling, disposal, facilities, § 12-8-20 et seq. Retention of contractual payments and creation of escrow accounts in contracts for installation, improvement of water or sewer facilities, § 13-10-81. Exercise of power of eminent domain for construction and operation of waterworks, § 22-3-60 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, a comma was added following "tolls" in the last sentence of subdivision (4) (now subdivision (a)(4)(B)).

Law reviews. — For article, "Local Government and Contracts that Bind," see 3 Ga. L. Rev. 546 (1969). For article advocating centralizing industrial and domestic waste treatment by local statutory amendments, see 23 Mercer L. Rev. 603 (1972). For article surveying local government law in 1984-1985, see 37 Mercer L. Rev. 313 (1985). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions prior to enactment of this Code section are included in the annotations for this Code section.

Property dedicated to a particular purpose cannot by the dedicatee, a municipality, be diverted from that purpose, except under the right of eminent domain. Donalson v. Georgia Power & Light Co., 175 Ga. 462, 165 S.E. 440 (1932) (decided under former law).

Power to condemn other property. — One municipality has power to condemn under reasonable circumstances the public property of other municipalities. Mays v. State, 110 Ga. App. 881, 140 S.E.2d 223 (1965).

City cannot compel use of city water. — There is nothing in the general authority conferred upon a city under the law set forth in this section in respect to the acquisition or construction of a water system, in addition to any powers a municipality may already have, whereby a city can compel the use of city water, or connection to a city water system. City of Midway v. Midway Nursing & Convalescent Ctr., Inc., 230 Ga. 77, 195 S.E.2d 452 (1973) (see O.C.G.A. § 36-34-5).

Nothing in the general authority conferred under O.C.G.A. § 36-34-5 in respect to the acquisition or construction of a water system, in addition to any powers a municipality may already have, empowers a city to compel the use of city water or connection to a city water system. Wall v. City of Athens, 663 F. Supp. 747 (M.D. Ga. 1987), aff'd sub nom., McCallum v. Athens, 976 F.2d 649 (11th Cir. 1992).

No power to conspire with private parties. — While O.C.G.A. § 36-34-5 does establish a policy to displace competition with regulation to some degree, and the legislation immunizes some of the anticompetitive activities engaged in by the defendant in providing water services outside the city from antitrust attack under the state action exemption, the legislation does not provide the state action exemption for contracting and conspiring with private parties, as opposed to political subdivisions, to maintain artificially low rates for these private parties in exchange for the private parties' agreement not to engage in direct competition, and maintenance of a discriminatory rate schedule, without cost justification, in order to make up for the losses incurred by such conduct. Wall v. City of Athens, 663 F. Supp. 747 (M.D. Ga. 1987), aff'd sub nom., McCallum v. Athens, 976 F.2d 649 (11th Cir. 1992).

Municipal corporation may not compel any person outside the municipal corporation's territorial limits to accept water service which the municipality undertakes to furnish, nor may the municipal authorities be compelled to render such service. City of Moultrie v. Burgess, 212 Ga. 22, 90 S.E.2d 1 (1955) (decided under former law).

Municipal corporation does not become in any sense a public utility by reason of the fact that the municipal corporation is empowered to operate, and does operate, electric light and water plant. City of Moultrie v. Burgess, 212 Ga. 22, 90 S.E.2d 1 (1955) (decided under former law).

Constitutionality of different rates for those residing outside corporate limits. — Plaintiffs, having no right to demand water service from the city, may purchase the water at the city's charge therefor, or plaintiffs may decline to do so, at plaintiffs' will, but the plaintiffs are in no position which authorizes the plaintiffs to complain of an excessive charge or a discriminating rate. Hence, there was no merit in the contention that the city's ordinances which fixed different water rates for those who resided outside of the city's corporate limits offended U.S. Const., amend. 14, or Ga. Const. 1945, Art. I, Sec. I, Para. II (see Ga. Const. 1983, Art. I, Sec. I, Para. II). City of Moultrie v. Burgess, 212 Ga. 22, 90 S.E.2d 1 (1955) (decided under former law).

Power to set rates in outlying territories. — Municipal corporation may classify rates to be charged in outlying territories, and upon failure of customers to pay such charges, the municipal corporation may discontinue the municipal corporation's service. City of Moultrie v. Bur-

gess, 212 Ga. 22, 90 S.E.2d 1 (1955) (decided under former law).

Only "users" may be charged. — City is authorized to prescribe and collect rates, fees, and charges only for public and private consumers and users who actually use the city's sewer system. Hummings v. City of Woodbine, 253 Ga. 255, 319 S.E.2d 862 (1984).

Immunity from federal antitrust liability. — City's anticompetitive operation of a waterworks is protected from federal antitrust liability by the state action immunity doctrine under Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943), and its progeny. McCallum v. City of Athens, 976 F.2d 649 (11th Cir. 1992).

Construction with O.C.G.A. § 36-36-7. — In a dispute concerning a city's desire to access water lines owned by a county but located in an area annexed by the city, it was determined, upon discerning the interplay between O.C.G.A. §§ 36-34-5 and 36-36-7(b), that the city was not permitted access to the line in question absent compliance with one of the three methods enumerated in O.C.G.A. § 36-34-5, namely by gift, purchase, or the exercise of the right of eminent domain. Cobb County v. City of Smyrna, 270 Ga. App. 471, 606 S.E.2d 667 (2004).

Cited in Coweta County v. City of Newnan, 253 Ga. 457, 320 S.E.2d 747 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 501 et seq.

ALR. — Power of state to exact fee or require license for taking water from stream, 29 ALR 1478.

Duty of public utility to duplicate service, 52 ALR 1111.

Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 ALR 997.

Power of municipality to agree to abide by conditions or regulations imposed by federal authority in respect of construction, maintenance, or operation of a municipal public utility plant or enterprise, 128 ALR 620.

Waters: right of municipality, as riparian owner, to use of water for public supply, 141 ALR 639.

Liability of municipality for fire loss due to its failure to provide or maintain adequate water supply or pressure, 163 ALR 348.

Liability of municipal corporation for damage to property resulting from inadequacy of drains and sewers due to defects in plan, 173 ALR 1031.

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates, 4 ALR2d 595.

Granting or taking of lease of property by municipality as within authorization of purchase or acquisition thereof, 11 ALR2d 168.

Right of municipality or public to use of subsurface of street or highway for purposes other than sewers, pipes, conduits for wires, and the like, 11 ALR2d 180.

Right to compel municipality to extend its water system, 48 ALR2d 1222.

Municipal operation of sewage disposal plant as governmental or proprietary function, for purposes of tort liability, 57 ALR2d 1336.

Municipality's liability for damage resulting from obstruction or clogging of drains or sewers, 59 ALR2d 281.

Municipality's liability arising from negligence or other wrongful act in carrying out construction or repair of sewers and drains, 61 ALR2d 874.

Right to condemn property in excess of needs for a particular public purpose, 6 ALR3d 297.

Propriety of injunctive relief against diversion of water by municipal corporation or public utility, 42 ALR3d 426.

Right of municipality to refuse services provided by it to resident for failure of resident to pay for other unrelated services, 60 ALR3d 714.

Validity and construction of regulation by municipal corporation fixing sewer-use rates, 61 ALR3d 1236.

What constitutes "state action" rendering public official's participation in private

antitrust activity immune from application of federal antitrust laws, 109 ALR Fed. 758.

Construction and application of 7 USCA § 1926(b), prohibiting curtailment or conditioning of water or sewer service based on inclusion within municipal borders, 146 ALR Fed. 387.

36-34-5.1. Lease agreements for providing library services.

Notwithstanding any provision of law to the contrary, each municipal corporation of this state is authorized, in the discretion of its governing authority, to enter into valid and binding lease agreements with nonprofit corporations, classified as public foundations (not private foundations) under the United States Internal Revenue Code, for the stated purpose of providing library services for any period of time not to exceed 15 years. (Ga. L. 1981, p. 833, § 1; Ga. L. 1987, p. 191, § 9.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 493.

C.J.S. — 63 C.J.S., Municipal Corporations, § 1147.

ALR. — Exercise of eminent domain for purpose of library, 66 ALR 1496.

36-34-5.2. Leases and contracts for operation and maintenance of botanical gardens in municipal corporations having population of more than 300,000.

Notwithstanding any provision of law to the contrary, any municipal corporation of this state having a population of more than 300,000 according to the United States decennial census of 1970 or any future such census is authorized, in the discretion of its governing authority, to enter into valid and binding leases and contracts with private persons, firms, associations, or corporations for any period of time not to exceed 50 years to provide for the operation and maintenance of botanical gardens on municipal property. (Ga. L. 1979, p. 4196, § 1; Code 1981, § 36-34-5.2, enacted by Ga. L. 1982, p. 2107, § 37.)

36-34-5.3. Leases and contracts for operation and maintenance of public zoos in municipal corporations having population of more than 300,000.

Notwithstanding any provision of law to the contrary, any municipal corporation of this state having a population of more than 300,000 according to the United States decennial census of 1970 or any future such census is authorized, in the discretion of its governing authority, to enter into valid and binding leases and contracts with private persons, firms, associations, or corporations for any period of time not to exceed 50 years to provide for the operation and maintenance of public zoos on municipal property. (Ga. L. 1980, p. 3734, § 1; Code 1981, § 36-34-5.3, enacted by Ga. L. 1982, p. 2107, § 38.)

36-34-6. Financing of facilities and services.

The governing body of each municipal corporation of this state is given the authority to issue, refund, and liquidate financial obligations, including bonds, incurred to finance any facilities or services which such municipal corporation undertakes to provide under authority of this chapter, subject to the provisions of the Constitution of this state and the general laws applicable to such bonds or other financial obligations. (Ga. L. 1962, p. 140, § 7.)

JUDICIAL DECISIONS

Cited in Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 511, 512.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2118 et seq., 2188 et seq.

ALR. — Change in law as to municipal bonds as affecting bonds previously authorized or voted, but not issued, 19 ALR 1055.

Assignment and transfer of government bonds, 22 ALR 775.

Sale of municipal or other public bonds at less than par or face value, 91 ALR 7; 162 ALR 396.

Validity of municipal bond issue for purpose of paying employees, 96 ALR 1204.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters, 97 ALR 442.

Priority or preference as between different issues of bonds of municipalities or political subdivisions, absent express provisions in that regard, 108 ALR 1018.

Requirement of prior appropriation by municipal authorities as condition of making a contract or incurring expense as applicable to local improvements, or bond issue payable only out of special funds and not constituting an obligation of the municipality, 124 ALR 1467.

Kind or type of contractual obligation within general terms, "contracts," "obligations," etc., or specific terms, "bonds,"

"notes," etc., in statute validating or legalizing obligations of municipalities or other public bodies, 128 ALR 1411.

Estoppel by recitals in municipal bonds as to lawfulness of issue, 158 ALR 938.

36-34-7. Powers supplemental.

The provisions of this chapter are in addition to the powers heretofore or hereafter granted to any municipal corporation. (Ga. L. 1962, p. 140, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 166.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 155, 156. 64 C.J.S., Municipal Corporations, § 1460.

36-34-8. Provisions of chapter general law; enactment of local or special laws on subject matters covered by chapter; effect of chapter upon amendment of municipal charters.

It is declared to be the intention of the General Assembly that the provisions of this chapter are general laws within the meaning of Article III, Section VI, Paragraph IV(a) of the Constitution. No local or special laws shall be enacted on subject matters over which municipal corporations are authorized to act pursuant to this chapter. Any provision of any municipal charter heretofore enacted covering subject matters over which municipal corporations are authorized to act pursuant to this chapter shall be amended, modified, superseded, or repealed only in accordance with subsection (b) of Code Section 36-35-3. (Ga. L. 1972, p. 820, § 1; Ga. L. 1983, p. 3, § 57.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 95, 163 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 139, 142, 150 et seq.

CHAPTER 35

HOME RULE POWERS

Sec.

36-35-1. Short title.
36-35-2. Incorporation, dissolution, merger, and boundary changes by local Act or under general law; annexation of deannexed property.
36-35-3. Adoption of ordinances, rules, and regulations; amendment of charters and amendment or repeal of ordinances, rules, and regulations by petition and referendum.
36-35-4. Compensation and benefits for employees and members of governing authority; conditions and requirements governing increases for elective members of governing authority.
36-35-4.1. Reapportionment of election districts for municipal elections.
36-35-5. Filing of charter amendments or revisions, notices, and affidavits; publication and distribution of amendments and revisions by Secretary of State.
36-35-6. Limitations on home rule powers.
36-35-6.1. Signs for privately owned businesses.
36-35-7. Provisions of chapter general law; enactment of local or special laws on subject matters covered by chapter; effect of chapter upon amendment of municipal charters.
36-35-8. Effect of conflict with Chapter 34.

Cross references. — Constitutional provision authorizing General Assembly to provide for self-government of municipalities, Ga. Const. 1983, Art. IX, Sec. II, Para. II.

Law reviews. — For article, "Home Rule for Home Affairs," see 1 Ga. L. Rev. 24 (1927). For article analyzing alternative means of implementing home rule legislation and advocating home rule for municipalities in light of numerous attempts to pass such legislation in Georgia, prior to repeal of Municipal Home Rule Law of 1951 (Ga. L. 1951, p. 116, § 1 et seq.) and adoption of the Municipal Home Rule Act of 1965 (this chapter), see 8 Mercer L. Rev. 337 (1957). For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B.J. 333 (1967). For article discussing the development of the Municipal Home Rule Act of 1965 (this chapter), see 4 Ga. St. B.J. 317 (1968). For article, "Home Rule: Its Impact on Georgia Local Government Law," see 8 Ga. St. B.J. 277 (1972). For article analyzing the changing relationship between state and local governments in Georgia in light of "Amendment 19," see 9 Ga. L. Rev. 757 (1975). For article discussing limitations on municipalities' "home rule" powers, see 12 Ga. L. Rev. 805 (1978). For article surveying recent legislative and judicial developments in zoning, planning and environmental law, see 31 Mercer L. Rev. 89 (1979). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For article, "Lawyers Who Represent Local Governments," see 23 Ga. St. B.J. 58 (1987). For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

For note discussing home rule in Georgia under 1947 Home Rule Act (Ga. L. 1947, p. 118, § 1 et seq.), see 1 Mercer L. Rev. 280 (1950).

OPINIONS OF THE ATTORNEY GENERAL

Municipal corporation which adopts or amends a retirement plan for the municipal corporation's employees must publish a notice of intent. 1973 Op. Att'y Gen. No. U73-119.

Charter consolidating governments of city and county should set out the desired powers of the consolidated government in an enumerated and specific manner. 1969 Op. Att'y Gen. No. 69-413.

36-35-1. Short title.

This chapter shall be known and may be cited as "The Municipal Home Rule Act of 1965." (Ga. L. 1947, p. 1118, § 1; Ga. L. 1951, p. 116, § 1; Ga. L. 1965, p. 298, § 1.)

Law reviews. — For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981). For article, "The United States Supreme Court as Home Rule Wrecker," see 34 Mercer L. Rev. 363 (1982).

JUDICIAL DECISIONS

Municipal Home Rule Act of 1965 (this chapter) does not provide sole method by which General Assembly may amend a city charter so as to change city boundaries. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967).

Constitutionality of local law extending municipal boundaries. — Local law extending municipal boundaries does not violate the constitutional guarantee of due process of the law because it subjects property owners in the area annexed to taxation by the municipality; nor does the local law deny to such property owners equal protection of the law within the meaning of U.S. Const., amend. 14. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967).

Constitutionality of Municipal Ordinance. — Ordinance providing certain insurance benefits for dependents of city employees who qualified and registered as domestic partners, which defined "dependent" consistent with state law, did not violate the Georgia Constitution or the Municipal Home Rule Act. City of Atlanta v. Morgan, 268 Ga. 586, 492 S.E.2d 193 (1997).

Existence of prior statutes permitting enlargement of boundaries does not deprive General Assembly of power to alter and extend municipal boundaries without the consent of the persons affected thereby. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967).

Both county governments and municipalities may levy taxes for public purposes connected with administration of county and city governments; as a corollary to this principle, it follows that counties and municipalities may appropriate and expend money for such public purpose. Peacock v. Georgia Mun. Ass'n, 247 Ga. 740, 279 S.E.2d 434 (1981).

Former Code 1933, § 69-904 et seq. was a "general law" and provided a method of municipal annexation as contemplated by the Municipal Home Rule Act of 1965 (see O.C.G.A. § 36-35-1 et seq.). Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864 (1972).

Cited in Dodson v. Graham, 462 F.2d 144 (5th Cir. 1972); Burnley v. Thompson, 524 F.2d 1233 (5th Cir. 1975).

OPINIONS OF THE ATTORNEY GENERAL

No city acting under this chapter could alter court having jurisdiction over state offenses. 1971 Op. Att'y Gen. No. U71-30.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 109, 110.

36-35-2. Incorporation, dissolution, merger, and boundary changes by local Act or under general law; annexation of deannexed property.

(a) No municipal corporation shall be incorporated, dissolved, merged, or consolidated with any other municipal corporation, or have its municipal boundaries changed except by local Act of the General Assembly or by such methods as may be provided by general law.

(b) Whenever any local Act of the General Assembly deannexes property lying within the boundaries of a municipal corporation, such property shall not be subject to annexation under Chapter 36 of this title by the municipal corporation from which the property was deannexed for a period of three years from such deannexation. (Ga. L. 1947, p. 1118, § 2; Ga. L. 1951, p. 116, § 2; Ga. L. 1965, p. 298, § 2; Ga. L. 1982, p. 3, § 36; Ga. L. 1983, p. 545, § 1; Ga. L. 1992, p. 2592, § 2.)

Law reviews. — For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B.J. 333 (1967).

JUDICIAL DECISIONS

Nature of general laws. — Laws operating uniformly throughout the state with respect to the subject matter, but applying only to cities or counties of a common class having a certain number of inhabitants or more, are general statutes as contemplated by this section. Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864 (1972) (see O.C.G.A. § 36-35-2).

Constitutionality of local law extending municipal boundaries. — Local law extending municipal boundaries does not violate the constitutional guarantee of due process of the law because the local law subjects property owners in the area annexed to taxation by the municipality; nor does the local law deny to such property owners equal protection of the law within the meaning of U.S. Const., amend. 14. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967).

Local act changing city limits so as to exclude developer's property, thereby vitiating any authority of the city to permit development of the property, was not unconstitutional. Signa Dev. Corp. v. Fayette County, 259 Ga. 11, 375 S.E.2d 839 (1989), cert. denied, 493 U.S. 814, 110 S. Ct. 63, 107 L. Ed. 2d 30 (1989).

This chapter does not provide the sole method by which the General Assembly may amend a city charter so as to change city boundaries. Lee v. City of

Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967) (see O.C.G.A. Ch. 35, T. 36).

Existence of prior statutes permitting enlargement of boundaries does not deprive the General Assembly of the power to alter and extend municipal boundaries without the consent of the persons affected thereby. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967).

Cited in Dodson v. Graham, 462 F.2d 144 (5th Cir. 1972).

OPINIONS OF THE ATTORNEY GENERAL

Altering boundaries by local act. — There is evidence of intent on the part of the General Assembly to retain authority to alter municipal boundaries through local Acts. 1975 Op. Att'y Gen. No. U75-59.

"Deannexation" of property presently lying within boundaries of municipal corporation may only be accomplished through local legislation amending the corporate charter so as to redefine the corporate boundaries. 1977 Op. Att'y Gen. No. U77-49.

Annexation of state park. — Municipality must have specific legislative approval to annex state park. 1968 Op. Att'y Gen. No. 68-211.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 31 et seq., 74 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 15, 16, 24, 57, 73, 107.

36-35-3. Adoption of ordinances, rules, and regulations; amendment of charters and amendment or repeal of ordinances, rules, and regulations by petition and referendum.

(a) The governing authority of each municipal corporation shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto. Any such charter provision shall remain in force and effect until amended or repealed as provided in subsection (b) of this Code section. This Code section, however, shall not restrict the authority of the General Assembly, by general law, to define this home rule power further or to broaden, limit, or otherwise regulate the exercise thereof. The General Assembly shall not pass any local law to repeal, modify, or supersede any action taken by a municipal governing authority under this Code section, except as authorized under Code Section 36-35-6.

(b) Except as provided in Code Section 36-35-6, a municipal corporation may, as an incident of its home rule power, amend its charter by following either of the following procedures:

(1) Municipal charters may be amended by ordinances duly adopted at two regular consecutive meetings of the municipal governing

authority, not less than seven nor more than 60 days apart. A notice containing a synopsis of the proposed amendment shall be published in the official organ of the county of the legal situs of the municipal corporation or in a newspaper of general circulation in the municipal corporation once a week for three weeks within a period of 60 days immediately preceding its final adoption. The notice shall state that a copy of the proposed amendment is on file in the office of the clerk or the recording officer of the municipal governing authority and in the office of the clerk of the superior court of the county of the legal situs of the municipal corporation for the purpose of examination and inspection by the public. The recording officer of the municipal governing authority shall furnish anyone, upon written request, a copy of the proposed amendment. No amendment under this paragraph shall be valid to change or repeal an amendment adopted pursuant to a referendum as provided in paragraph (2) of this subsection or to change or repeal a local Act of the General Assembly ratified in a referendum as provided in paragraph (2) of this subsection or to change or repeal a local Act of the General Assembly ratified in a referendum by the electors of the municipal corporation unless at least 12 months have elapsed after such referendums. No amendment under this paragraph shall be valid if provision has been made therefor by general law; or

(2)(A) Amendments to charters or amendments to or repeals of ordinances, resolutions, or regulations adopted pursuant to subsection (a) of this Code section may be initiated by a petition, filed with the governing authority of the municipal corporation, containing, in cases of municipal corporations with a population of 5,000 or less, the signatures of at least 25 percent of the electors registered to vote in the last general municipal election; in cases of municipal corporations with a population of more than 5,000 but not more than 100,000, at least 20 percent of the electors registered to vote in the last general municipal election; and in cases of municipal corporations with a population of more than 100,000, at least 15 percent of the electors registered to vote in the last general municipal election. The petition shall specifically set forth the exact language of the proposed amendment or repeal. The governing authority shall determine the validity of such petition within 50 days of its filing with the governing authority. In the event that the governing authority determines that such petition is valid, it shall be the duty of such authority to issue the call for an election for the purpose of submitting such amendment or repeal to the registered electors of the municipal corporation for their approval or rejection. Such call shall be issued within one week after the determination of the validity of the petition. The governing authority shall set the date of the election as provided in Code Section 21-2-540. The

governing authority shall cause a notice of the date of the election to be published in the official organ of the county of the legal situs of the municipal corporation or in a newspaper of general circulation in the municipal corporation once a week for two weeks immediately preceding such date. The notice shall also contain a synopsis of the proposed amendment or repeal and shall state that a copy thereof is on file in the office of the clerk or the recording officer of the municipal governing authority and in the office of the clerk of the superior court of the county of the legal situs of the municipal corporation, for the purpose of examination and inspection by the public. The recording officer of the municipal governing authority shall furnish anyone, upon written request, a copy of the proposed amendment. If more than one-half of the votes cast on the question are for approval of the amendment or the repeal, the same shall become of full force and effect; otherwise it shall be void and of no force and effect. The expense of the election shall be borne by the municipal corporation. It shall be the duty of the governing authority to hold and conduct such election. The election shall be held under the same laws and rules and regulations as govern special elections of the municipal corporation, except as otherwise provided in this subparagraph. It shall be the duty of the governing authority to canvass the returns and to declare and certify the result of the election. It shall be the further duty of the governing authority to certify the result thereof to the Secretary of State. A referendum on any such amendment or repeal shall not be held more often than once each year. No amendment under this subparagraph shall be valid if provision has been made therefor by general law.

(B) In the event that the governing authority determines that the petition is not valid, it shall publish in explicit detail the reasons why such petition is not valid. Such publication shall be in the official organ of the county of the legal situs of the municipal corporation or in a newspaper of general circulation in the municipal corporation, in the week immediately following the date on which the petition is declared to be not valid. In any proceeding in which the validity of the petition is at issue, the tribunal considering such issue shall not be limited by the reasons assigned.

(C) The sponsor of a petition authorized by this paragraph shall obtain copies of all official petitions from the clerk of the governing authority. The clerk of the governing authority shall approve all petitions as to form. The clerk of the governing authority shall provide a place on each form for the person collecting signatures to provide his or her name, street address, city, county, state, ZIP Code, and telephone number and to swear that he or she is a resident of the municipality affected by the petition and that the

signatures were collected inside the boundaries of the affected municipality. The collection of signatures for the petition shall begin on the day the clerk of the governing authority provides official copies to the sponsor of the petition. A petition authorized by subparagraph (A) of this paragraph shall not be accepted by the governing authority for verification if more than 60 days have elapsed since the date the sponsor of the petition first obtained copies of the petition from the clerk of the governing authority. Any petition being circulated pursuant to subparagraph (A) of this paragraph on July 1, 1989, shall be filed with the clerk of the governing authority by not later than July 11, 1989. The clerk of the governing authority shall, within seven days, provide the sponsor with official petitions. The sponsor shall have 60 additional days after obtaining official petitions to collect the remaining number of required signatures. Nothing in this subparagraph shall invalidate otherwise valid signatures collected on or before July 1, 1989.

(c) Any other provisions of this chapter to the contrary notwithstanding, subsection (b) of this Code section shall not apply to any city-county consolidated government in existence on January 1, 1976, and any such city-county consolidated government shall not be authorized to amend its consolidated government charter pursuant to subsection (b) of this Code section. (Ga. L. 1965, p. 298, § 3; Ga. L. 1966, p. 296, § 1; Ga. L. 1976, p. 1429, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1989, p. 1584, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1998, p. 295, § 3.)

Law reviews. — For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B.J. 333 (1967). For article as to the power of Georgia local governments to regulate the trades and occupations of its citizens, see 9 Ga. L. Rev. 115 (1974). For article, "Extraterritorial Power in Georgia Municipal Law," see 12 Ga. L. Rev. 1 (1977). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For note on the validity of population statutes in Georgia, see 2 Ga. St. B.J. 533 (1966).

JUDICIAL DECISIONS

Analysis

General Consideration
Powers of Municipalities
Validity of Ordinances

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions prior to enactment of this Code section and under Ga. L. 1927, p. 99 are included in the annotations for this Code section.

Municipal corporation is a public corporation, being a subordinate agent of the state, exercising governmental functions in a certain community; and while an ordinance enacted by such governmental agency may in that sense be a law of the state, it is not a law of the state

General Consideration (Cont'd)

as is contemplated in the Constitution defining the jurisdiction of the Supreme Court and the Court of Appeals. Maner v. Dykes, 183 Ga. 118, 187 S.E. 699 (1936) (decided under former Code 1933, § 22-103).

County's election authority. — County's method of not counting abstentions by county commissioners, and therefore not considering abstentions as either affirmative or negative votes, was within the county's authority; thus, a citizen challenging the method of counting votes was not entitled to declaratory relief. Merry v. Williams, 281 Ga. 571, 642 S.E.2d 46 (2007).

This chapter does not provide sole method by which General Assembly may amend city charter so as to change the city boundaries. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967) (see O.C.G.A. Ch. 35, T. 36).

Subsection (b). — Procedure for petition and referendum in subsection (b) of O.C.G.A. § 36-35-3 applies only to amendments to municipal charters. Kemp v. City of Claxton, 269 Ga. 173, 496 S.E.2d 712 (1998).

Municipality not estopped from attacking local law passed after charter granted. — When a local law vitally affecting the rights and powers granted to a municipality by charter is passed subsequently to the granting of the charter, the municipality is not estopped from attacking the provisions of the local law on the ground that the provisions are unconstitutional and void. City of Moultrie v. Moultrie Banking Co., 175 Ga. 738, 165 S.E. 814 (1932) (decided under Ga. L. 1927, p. 99).

O.C.G.A. § 36-35-3 is inapplicable when a municipality's obligation to make available to customers sufficient information about electricity rates is at issue. City of Commerce v. Duncan & Godfrey, Inc., 157 Ga. App. 337, 277 S.E.2d 266 (1981).

City charter provision on term limits for police officers prevailed over police department personnel manual provisions covering the dismissal of police department employees. City of Buchanan v. Pope, 222 Ga. App. 716, 476 S.E.2d 53 (1996).

Cited in Dodson v. Graham, 462 F.2d 144 (5th Cir. 1972); Jackson v. Inman, 232 Ga. 566, 207 S.E.2d 475 (1974); Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268 (1978); DeClue v. City of Clayton, 246 Ga. App. 487, 540 S.E.2d 675 (2000); Beaman v. City of Peachtree City, 256 Ga. App. 62, 567 S.E.2d 715 (2002).

Powers of Municipalities

Municipality is a creature of the legislature deriving the municipality's powers and privileges from that body through the municipality's charter. The municipality's ordinances are laws, but only laws of the municipality itself. Maner v. Dykes, 183 Ga. 118, 187 S.E. 699 (1936) (decided under former law).

Municipalities lawfully may exercise powers necessarily implied from powers expressly granted. Goodman v. City of Atlanta, 246 Ga. 79, 268 S.E.2d 663 (1980).

In determining the validity of an ordinance, the court must decide whether the city had the power to enact the ordinance and whether the exercise of the city's power is clearly reasonable. City of Atlanta v. McKinney, 265 Ga. 161, 454 S.E.2d 517 (1995).

Existence of police power dependent on express grant by state. — Police power, while it is an attribute of sovereignty and an inherent power of national and state government because the existence of government as well as the social order, security, life, and health of the individual citizen depend upon it, is a power possessed by municipal corporations only if, where, and to the extent there has been an express grant by the state. Palmer v. Hall, 380 F. Supp. 120 (M.D. Ga. 1974), modified, 517 F.2d 705 (5th Cir. 1975).

Fundamental and substantive changes in city government cannot be made by a municipality under general home rule laws. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876 (1977).

Authority to enact new charters including drastic changes in city government reserved in General Assembly. — The General Assembly has

reserved the legislative power to enact new charters for existing cities when such charters include drastic changes in the composition and form of city government, and the election and terms of office of the members of the governing authority of cities. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876 (1977).

Authority to adopt ordinance amending city charter. — Authority of a municipality to adopt an ordinance amending its city charter cannot be derived from subsection (a), which prohibits the enactment of local ordinances inconsistent with municipal charter provisions. The ordinance must be adopted pursuant to the procedures set out in subsection (b), which establishes one of two methods through which a municipality may amend a municipality's charter without the intervention of the General Assembly. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876 (1977) (see O.C.G.A. § 36-35-3).

Power to regulate markets and provide reasonable rules for their conduct, looking to the health and safety of a city or community, is a right within the scope of municipal regulation, and the court will not interfere with the exercise of the discretion granted to municipalities upon the ground of unreasonableness, except in a clear case. Jones v. City of Atlanta, 51 Ga. App. 218, 179 S.E. 922 (1935) (decided under former law).

Constitutionality of local law extending municipal boundaries. — Local law extending municipal boundaries does not violate the constitutional guarantee of due process of the law because the local law subjects property owners in the area annexed to taxation by the municipality; nor does the local law deny to such property owners equal protection of the law within the meaning of U.S. Const., amend. 14. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967).

Existence of prior statutes permitting enlargement of boundaries does not deprive General Assembly of power to alter and extend municipal boundaries without the consent of the persons affected thereby. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967).

Validity of Ordinances

Ordinance which infringes upon common or statute law is void. Cruise v. City of Rome, 94 Ga. App. 373, 94 S.E.2d 617 (1956).

Reasonableness of ordinance a question of law. — Ordinances of a municipal body under a power vested in the municipal body are conclusive on the courts unless so unreasonable or oppressive of the rights of the citizen as to constitute an attempted abuse rather than a legitimate use of the power; but the reasonableness of an ordinance is a question of law and municipal ordinances are reviewable by the courts as to reasonableness. If found to be unreasonable, those ordinances will be held void. Cruise v. City of Rome, 94 Ga. App. 373, 94 S.E.2d 617 (1956) (decided under former law).

Legislation by municipal corporation must be put in form of an ordinance, and acts that are done in a ministerial capacity and for temporary purposes may be in the form of a resolution. Allen v. Wise, 204 Ga. 415, 50 S.E.2d 69 (1948) (decided under former law).

Municipal ordinance contravening usual and ordinary rights of a citizen cannot be legally passed unless the power to do so be plainly conferred by valid and competent legislative grant. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503 (1938) (decided under former law).

Constitutionality of refusal to allow conduct of particular business. — Unless a business may be held to be a nuisance per se, an Act allowing a municipality to refuse the conduct of the same, irrespective of its compliance with any regulations adopted for the proper exercise of such business, is violative of Ga. Const. 1976, Art. I, Sec. I, Para. I, and Art. I, Sec. II, Para. III (see Ga. Const. 1983, Art. I, Sec. I, Paras. I and II). Jones v. City of Atlanta, 51 Ga. App. 218, 179 S.E. 922 (1935) (decided under former law).

No power to declare lawful business nuisance. — Municipality has no authority, by ordinance, to declare a useful and per se perfectly lawful business a nuisance, and provide for the issuance of

Validity of Ordinances (Cont'd)

permits by the city, which may be granted or declined in the discretion of the governing authorities. Jones v. City of Atlanta, 51 Ga. App. 218, 179 S.E. 922 (1935) (decided under former law).

Completeness of annexation statute. — There is no requirement, statutory or otherwise, that the local annexation statute itself make provisions for the myriad adjustments between the annexed territory and the municipality which the annexation necessitates. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876 (1977).

Charter amendment needed to abolish city department created by home rule enactment. — City department created by a home rule enactment, once having achieved charter status, can be abolished only by another home rule charter amendment requiring advertisements in advance and adoption by the council at two consecutive regular meetings as required by subsection (b)(1). Jackson v. Fraternal Order of Police Lodge No. 8, 234 Ga. 906, 218 S.E.2d 633 (1975) (see O.C.G.A. § 36-35-3).

Ordinance was properly advertised in advance by publishing synopsis of proposed amendment. Jackson v. Fraternal Order of Police Lodge No. 8, 234 Ga. 906, 218 S.E.2d 633 (1975).

Requiring corporation to give bond before transporting goods unauthorized. — City was without authority under the city's charter or the general law to require a corporation to give bond or file a policy of liability insurance as a prerequisite to transporting the corporation's goods from its place of business in an automobile, cart, wagon, or dray. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503 (1938) (decided under former law).

Ordinance prohibiting blowing of train whistle. — Municipal ordinance providing without exception that no person operating a locomotive engine shall blow the whistle thereof within the corporate limits of a city is void as being unreasonable, contrary to public interest, public policy, and the general welfare of the public, when it appears without dispute that the ordinance's application at certain grade crossings within the city would prohibit the operator of a locomotive engine from giving adequate warning to persons who may be in, near, or about to enter a place of danger upon the tracks where the locomotive engine is operating. Cruise v. City of Rome, 94 Ga. App. 373, 94 S.E.2d 617 (1956) (decided under former law).

Waste removal ordinance assessing fees for the collection, removal, or disposal of solid wastes against a property owner for apartment units which were neither occupied nor habitable was not authorized by the city charter. Monticello, Ltd. v. City of Atlanta, 231 Ga. App. 382, 499 S.E.2d 157 (1998).

Claim not valid. — City did not assert a valid breach of ordinance claim arising out of a corporation's failure to pay the city additional sums that the city claimed were owed due to a natural gas billing error as: (1) in order to assert a breach of ordinance claim, the city had to show that the ordinance was validly enacted; (2) the city failed to present any evidence showing that an alleged ordinance setting natural gas billing rates was enacted in conformance with the requirements imposed under Lawrenceville, Ga., City Charter §§ 2.22, 2.29; and (3) the city's claim was, in actuality, simply a claim on an account. City of Lawrenceville v. Ricoh Elecs., Inc., 370 F. Supp. 2d 1328 (N.D. Ga. 2005).

Disregard of parliamentary rule no basis for annulment or invalidation. — While municipal governing bodies usually adopt or recognize parliamentary law as their rules of order and proceeding, courts ordinarily will not annul or invalidate an ordinance enacted in disregard of parliamentary rule, provided the enactment is made in the manner required by statute. The rules of parliamentary practice are merely procedural, and not substantive. South Ga. Power Co. v. Baumann, 169 Ga. 649, 151 S.E. 513 (1929) (decided under former law).

Racial and sexual quotas in contracts void. — City ordinance requiring that certain percentages of contracts be awarded on the basis of race and sex conflicts with the legislative intent and purpose embodied in the bid requirement in the city charter that contracts be

awarded without favoritism to obtain reasonable quality at the lowest cost, and is therefore void. Georgia Branch, Associated Gen. Contractors of Am., Inc. v. City of Atlanta, 253 Ga. 397, 321 S.E.2d 325 (1984).

Provision for full-time fire department. — Proposed municipal charter amendment which would require provision of fire protection and that such fire protection be provided by a city fire department, with full-time, paid personnel, employed by the city, does not violate Ga. Const. 1983, Art. IX, Sec. II, Para. III. Sadler v. Nijem, 251 Ga. 375, 306 S.E.2d 257 (1983).

Adoption of occupation tax on businesses within corporate limits was not authorized by O.C.G.A. Ch. 35, T. 36. City of Tunnel Hill v. Ridley, 183 Ga. App. 486, 359 S.E.2d 184, cert. denied, 183 Ga. App. 905, 359 S.E.2d 184 (1987).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions prior to the enactment of this Code section are included in the annotations for this Code section.

City police officer may not arrest one for violation of city ordinances when the police officer is outside city limits. 1954-56 Op. Att'y Gen. p. 490 (decided under former law).

Amount of license fees or taxes. — Licensing power of a municipality is granted by the charter creating the municipality; the amount of license fees or taxes a municipality may levy on a particular business is not regulated by statute, but appellate courts have ruled that a municipal tax on an occupation must be reasonable. 1954-56 Op. Att'y Gen. p. 493 (decided under former law).

City may establish personnel department and merit board without the necessity of special Acts of the General Assembly. 1969 Op. Att'y Gen. No. 69-310.

Joint purchase of riot control equipment. — All counties and those municipalities having the requisite charter authority may enter into cooperative agreements with one another for the purchase and use of equipment to be employed in jointly administered riot control programs. 1969 Op. Att'y Gen. No. 69-141.

Governing authority of affected municipality or county has authority to control boxing events in the authority's jurisdiction. 1970 Op. Att'y Gen. No. 70-167.

Effect of failure of prior election on acts validly conducted. — Municipality may treat an election ordered as a result of the failure of a prior election as a continuation of that prior election, recognizing those acts validly conducted. 1976 Op. Att'y Gen. No. 76-23.

Change of election date. — Municipality is not empowered to amend a municipal charter by ordinance with respect to date of a municipal general election. 1977 Op. Att'y Gen. No. 77-33.

City has home rule power to amend a city's charter by ordinance so as to remove from the charter a limitation on the millage rate which the city may use in levying ad valorem taxes. 1983 Op. Att'y Gen. No. U83-19.

Municipal home rule power not violated by World Congress Center's regulations. — O.C.G.A. § 10-9-14 empowering the Geo. L. Smith II Georgia World Congress Center Authority to regulate activities on the sidewalks and streets immediately adjacent to the World Congress Center's projects during an event period do not violate the City of Atlanta's home rule power under subsection (a) of O.C.G.A. § 36-35-3 or Ga. Const. 1983, Art. IX, Sec. II, Para. III(c). 1994 Op. Att'y Gen. No. U94-4.

City authorized to charge rental fee to state. — City of Atlanta may charge the Board of Regents for permitting a fiber optic cable to lie under city owned streets based on city code provisions enacted pursuant to the city's home rule power. 1995 Op. Att'y Gen. No. 95-14.

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Initiative and Referendum, §§ 6, 24 et seq., 33 et seq., 48. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 30 et seq., 90.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 30, 112 et seq., 385 et seq.

ALR. — Power of municipal councils to punish for contempt, 8 ALR 1586.

Validity of municipal ordinance prohibiting or regulating keeping of livestock, 32 ALR 1372; 40 ALR 566.

Delegation by municipality of its powers as to building regulations, 43 ALR 834; 46 ALR 88.

Validity of statute or ordinance relating to place of sale of food, 52 ALR 669.

Power to forbid or restrict repair of wooden building within fire limits, 56 ALR 878.

Constitutionality of city manager or commission form of municipal government, 67 ALR 737.

Power to include in municipal contract or proposal therefor, provisions designed to relieve local unemployment, or encourage local industries, 81 ALR 255.

Implied power of municipality to operate nursery, quarry, gravel pit, or other sites for production of material needed for carrying out powers expressly conferred upon it, 104 ALR 1342.

Matters pertaining to police department as within exclusive control of municipalities under home rule charters, 105 ALR 259.

Home rule charter as affecting power of legislature in respect of municipal taxation, 106 ALR 1202.

Validity, construction, and application of ordinances prohibiting or regulating "curb service," 111 ALR 131.

Power of municipality to impose chain store license tax, 111 ALR 596.

Statute relating to municipal fire departments as interference with local self-government, 141 ALR 903.

Validity of municipal regulation of solicitation of magazine subscriptions, 9 ALR2d 728.

Conclusiveness of declaration of emergency in ordinance, 35 ALR2d 586.

What constitutes requisite majority of members of municipal council voting on issue, 43 ALR2d 698.

Power of municipality or other governmental unit to make contract or covenant exempting or releasing property from special assessment, 47 ALR2d 1185.

Municipal power as to billboards and outdoor advertising, 58 ALR2d 1314.

Validity of municipal regulation of storage or accumulation of lumber, straw, trash, or similar inflammable material, 64 ALR2d 1040.

Ordinance providing for suspension or revocation of state-issued driver's license as within municipal power, 92 ALR2d 204.

Power of municipal corporation to enact civil rights ordinance, 93 ALR2d 1028.

Validity of municipal ordinance regulating time during which restaurant business may be conducted, 53 ALR3d 942.

Validity and construction of curfew statute, ordinance, or proclamation, 59 ALR3d 321; 83 ALR4th 1056.

Construction and application of ordinances relating to unrestrained dogs, cats, or other domesticated animals, 1 ALR4th 994.

Power of municipal corporation to legislate as to Sunday observance, 10 ALR4th 246.

Validity, construction, and effect of juvenile curfew regulations, 83 ALR4th 1056.

36-35-4. Compensation and benefits for employees and members of governing authority; conditions and requirements governing increases for elective members of governing authority.

(a) The governing authority of each municipal corporation is authorized to fix the salary, compensation, and expenses of its municipal employees and the members of its municipal governing authority and to

provide insurance, retirement, and pension benefits, coverage under federal old-age, survivors and disability programs, hospitalization benefits, and workers' compensation benefits for its employees, their dependents, and their survivors and for members of the municipal governing authority, their dependents, and their survivors, when such benefits are provided to municipal employees. Any previous actions to extend insurance, federal old-age, survivors and disability programs, retirement, hospitalization, and workers' compensation benefits to members of the municipal governing authority are validated. With the exception of the provision of insurance, federal old-age, survivors and disability programs, retirement, hospitalization, and workers' compensation benefits, any action to increase the salary or compensation of the elective members of the municipal governing authority shall be subject to the following conditions and requirements:

(1) Any such increase shall not be effective until after the taking of office of those elected at the next regular municipal election which is held immediately following the date on which the action to increase the compensation was taken;

(2) Such action shall not be taken during the period of time beginning with the date that candidates for election to membership on the municipal governing authority may first qualify as such candidates and ending with the date members of the municipal governing authority take office following their election; and

(3) Such action shall not be taken until notice of intent to take the action has been published in a newspaper of general circulation designated as the legal organ in the county and in the municipal corporation at least once a week for three consecutive weeks immediately preceding the week during which the action is taken.

(b) As used in subsection (a) of this Code section, the phrase "elective members of the municipal governing authority" means, notwithstanding any terminology or designation of a municipal governing authority or governing body contained in any municipal charter, any elective municipal official who exercises any executive or legislative or executive and legislative powers of the municipal corporation, specifically including a mayor, vice-mayor, president or chairman of a municipal council, member of a municipal council, member of a board of aldermen, or member of a board of commissioners. Such phrase shall also include any person who is appointed to fill a vacancy in any such elective office.

(c) As used in subsection (a) of this Code section, the words "salary or compensation," as applied to the elective members of a municipal governing authority, shall include any expense allowance or any form of payment or reimbursement of expenses, except reimbursement for expenses actually and necessarily incurred by members of a municipal

governing authority in carrying out their official duties. The governing authority of each municipal corporation shall be authorized to provide by ordinance for the reimbursement of such actual and necessary expenses.

(d) As used in subsection (a) of this Code section, the words "retirement" and "pension" shall mean termination from municipal service with the right to receive a benefit based upon all or part of such municipal service in accordance with the terms of the ordinance or contract pursuant to which the municipality provides for payment of such benefits. The General Assembly declares and affirms that the Act approved April 17, 1981 (Ga. L. 1981, p. 1741) was intended to assure that prior advertisement of actions to provide insurance, federal old-age, survivors and disability programs, retirement, pension, hospitalization, and workers' compensation benefits to elected members of the municipal governing authority, their dependents, and their survivors is not required. (Ga. L. 1965, p. 298, § 5; Ga. L. 1973, p. 778, § 4; Ga. L. 1974, p. 195, § 1; Ga. L. 1975, p. 28, § 1; Ga. L. 1979, p. 645, § 2; Ga. L. 1981, p. 1741, § 1; Ga. L. 1987, p. 1055, § 1.)

Law reviews. — For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B.J. 333 (1967). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions prior to enactment of this Code section are included in the annotations for this Code section.

Mayor is not member of "municipal governing authority" and, therefore, the authority of the city council to increase the compensation paid to the office of the mayor is not subject to the strictures of this section. Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268 (1978) (decided prior to amendment of O.C.G.A. § 36-35-4 by Ga. L. 1979, p. 645, § 2).

Meaning of phrase "governing authority". — Generally accepted meaning of the phrase "governing authority" or "governing body," in reference to the operation of city or county governments, is a council or board performing legislative functions. Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268 (1978) (decided prior to amendment of O.C.G.A. § 36-35-4 by Ga. L. 1979, p. 645, § 2).

In determining whether municipal officer is part of governing authority of municipality, the question is whether that municipal officer possesses legislative power. Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268 (1978) (decided prior to amendment of O.C.G.A. § 36-35-4 by Ga. L. 1979, p. 645, § 2).

Fact that mayor of town is presiding officer of council and has power to cast tie-breaking votes does not make the mayor a member of council if the city charter provides that the mayor is not to be a member. Accordingly, even though the president of the city council is the presiding officer of the council and possesses the authority to cast tie-breaking votes, the mayor should not be considered a member of the council, since the city charter expressly provides that the mayor is not to be a member. Therefore, an increase in the mayor's compensation is not subject to this section. Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268 (1978) (decided prior to amendment of

O.C.G.A. § 36-35-4 by Ga. L. 1979, p. 645, § 2).

City not authorized to pay mayor for services of city manager. — City is not authorized to pay to a city's mayor compensation, over and beyond the sum specified in the charter as the mayor's salary, for services ordinarily rendered by a city manager. Welsch v. Wilson, 217 Ga. 582, 124 S.E.2d 77 (1962) (decided under former law).

"Retirement benefits" construed. — Benefits provided under a city retirement plan are retirement benefits expressly exempted under subsection (a) of O.C.G.A. § 36-35-4 and not in the nature of a pension or gratuity when the retirement plan allows council members, after a given period of time, to terminate employment and receive partial credit for past years' service toward the total required time for entitlement to a monthly payment for life. Swann v. Board of Trustees, 257 Ga. 450, 360 S.E.2d 395 (1987) (decided prior to 1987 amendment).

No notice required prior to council's consideration of participation in retirement system. — City council is not required by statute to advertise notice of the council's intent to consider an ordinance extending participation in the Joint Municipal Employees Retirement System pension to the council's own members. City of Marietta v. Holland, 252 Ga. 299, 314 S.E.2d 97 (1984); Swann v. Board of Trustees, 257 Ga. 450, 360 S.E.2d 395 (1987).

Cited in King v. Herron, 241 Ga. 5, 243 S.E.2d 36 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Policy behind subsection (a) of this section is to impose restrictions upon the powers of members of municipal governing authorities to increase their own salaries or compensation. 1980 Op. Att'y Gen. No. U80-27.

Subsection (a) of this section does not prohibit increase from applying to whole council after next election when that election involves less than all positions on the governing authority. 1980 Op. Att'y Gen. No. U80-27.

City may set up retirement system for city employees without necessity of amending city charter. 1970 Op. Att'y Gen. No. U70-80.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 185, 202 et seq., 221 et seq., 226. 63C Am. Jur. 2d, Public Officers and Employees, §§ 276 et seq., 287, 293.

Am. Jur. Proof of Facts. — Wrongful Termination of Retirement Benefits, 13 POF2d 531.

C.J.S. — 62 C.J.S., Municipal Corporations, § 473 et seq.

36-35-4.1. Reapportionment of election districts for municipal elections.

(a) Subject to the limitations provided by this Code section, the governing authority of any municipal corporation is authorized to reapportion the election districts from which members of the municipal governing authority are elected following publication of the United States decennial census of 1980 or any future such census. Such reapportionment of districts shall be effective for the election of members to the municipal governing authority at the next regular general municipal election following the publication of the decennial census.

(b) The municipal governing authority shall by ordinance amend its charter pursuant to paragraph (1) of subsection (b) of Code Section 36-35-3 to reapportion the districts in accordance with the following specifications:

(1) Each reapportioned district shall be formed of contiguous territory; and the boundary lines of such district shall be the center lines of streets or other well-defined boundaries;

(2) Variations in population among such districts shall comply with the one person-one vote requirements of the United States Constitution; and

(3) The reapportionment shall be limited to adjusting the boundary lines of the existing districts only to the extent reasonably necessary to comply with the requirements of paragraph (2) of this subsection; and the number of members of the municipal governing body and the manner of electing such members, except for the adjustment of district boundary lines, shall not be changed by the municipal governing authority.

(c) In addition to reapportionment following publication of the decennial census, a municipal governing authority shall reapportion districts pursuant to this Code section if the annexation of additional territory to the corporate boundaries of the municipality has the effect of denying electors residing within the newly annexed territory the right to vote for members of the municipal governing authority on substantially the same basis as the other electors of the municipality vote for members of the municipal governing authority. The reapportionment provided for in this subsection shall meet the criteria specified in subsection (b) of this Code section and shall be further limited to making only those adjustments in district boundary lines as may be reasonably necessary to include the newly annexed territory within such districts. Reapportionment under this subsection shall be effective for the next regular general municipal election following the annexation.

(d) This Code section shall not prohibit the General Assembly from enacting a local law at any time to amend the charter of a municipality to reapportion or otherwise change election districts from which members of the municipal governing authority are elected. If such action is taken by the General Assembly following publication of a decennial census, but before the first regular general municipal election following the publication of such census, the local Act of the General Assembly shall nullify the power given to the municipal governing authority by subsections (a) and (b) of this Code section to reapportion districts following publication of that decennial census. If such action is taken by the General Assembly in conjunction with the annexation, by local Act

of the General Assembly, of additional territory to the corporate boundaries of the municipality, the local Act of the General Assembly shall nullify the power and duty given to the municipal governing authority by subsection (c) of this Code section to reapportion districts as a result of that annexation.

(e) In addition to reapportionment following publication of the decennial census, the governing authority of any municipal corporation with a population of 40,000 or more according to the latest United States decennial census is authorized not more than one time during the ten-year period between the publication of consecutive decennial censuses to reapportion or modify the election districts from which members of the municipal governing authority are elected; provided, however, that (1) no such reapportionment shall result in the redistricting of more than 600 persons, (2) no such reapportionment shall occur within 180 days of a general or special municipal election or primary, and (3) a map reflecting any changes and copies of any communications to or from the United States Department of Justice relating to such changes are furnished to the Secretary of State and the Legislative Reapportionment Office within 30 days after such change or communication. Such reapportionment of districts shall be effective for the election of one or more members to the municipal governing authority at the next regular general municipal election or special municipal election following such reapportionment. (Ga. L. 1981, p. 497, § 2; Ga. L. 1997, p. 864, § 1.)

Law reviews. — For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 14 Am. Jur. 2d, Census, § 9. 25 Am. Jur. 2d, Elections, §§ 13 et seq., 23 et seq.

C.J.S. — 29 C.J.S., Elections, § 75.

36-35-5. Filing of charter amendments or revisions, notices, and affidavits; publication and distribution of amendments and revisions by Secretary of State.

No amendment or revision of any charter made pursuant to this chapter shall become effective until a copy of the amendment or revision, a copy of the required notice of publication, and an affidavit of a duly authorized representative of the newspaper in which the notice was published, to the effect that the notice has been published as provided in this chapter, has been filed with the Secretary of State and in the office of the clerk of the superior court of the county of the legal situs of the municipal corporation. The Secretary of State shall provide

for the publication and distribution of all such amendments and revisions at least annually. (Ga. L. 1965, p. 298, § 6.)

Law reviews. — For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B.J. 333 (1967). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Mere failure to file ordinance does not make it ineffective charter amendment. — After many months of operation under the ordinance as adopted and filed in the office of the Secretary of State, mere failure to also file the completed ordinance in the office of the clerk of court does not make the ordinance an ineffective charter amendment. Jackson v. Fraternal Order of Police Lodge No. 8, 234 Ga. 906, 218 S.E.2d 633 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 293.

C.J.S. — 62 C.J.S., Municipal Corporations, § 351 et seq.

36-35-6. Limitations on home rule powers.

(a) The power granted to municipal corporations in subsections (a) and (b) of Code Section 36-35-3 shall not be construed to extend to the following matters or to any other matters which the General Assembly by general law has preempted or may hereafter preempt; but such matters shall be the subject of general law or the subject of local Acts of the General Assembly to the extent that the enactment of such local Acts is otherwise permitted under the Constitution:

(1) Action affecting the composition and form of the municipal governing authority, the procedure for election or appointment of the members thereof, and the continuance in office and limitation thereon for such members, except as authorized in Chapter 2 of Title 21 or as provided in Code Section 36-35-4.1;

(2)(A) Action defining any offense, which so defined, is also an offense under the criminal laws of Georgia;

(B) Action providing for confinement in excess of six months; and

(C) Action providing for fines and forfeitures in excess of $1,000.00;

(3) Action adopting any form of taxation beyond that authorized by law or by the Constitution;

(4) Action affecting the exercise of the power of eminent domain;

(5) Action expanding the power of regulation over any business activity regulated by the Public Service Commission beyond that authorized by charter or general law or by the Constitution;

(6) Action affecting the jurisdiction of any court; and

(7) Action changing charter provisions relating to the establishment and operations of an independent school system.

(b) The power granted in subsections (a) and (b) of Code Section 36-35-3 shall not include the power to take any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power.

(c) Nothing in this Code section shall affect Code Sections 36-35-4 and 36-35-5. (Ga. L. 1965, p. 298, § 4; Ga. L. 1966, p. 296, §§ 2, 3; Ga. L. 1970, p. 346, § 1; Ga. L. 1973, p. 778, § 3; Ga. L. 1981, p. 497, § 1; Ga. L. 1983, p. 468, §§ 1, 2; Ga. L. 1984, p. 22, § 36; Ga. L. 1998, p. 295, § 3.)

Law reviews. — For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B.J. 333 (1967). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

Although the meaning of O.C.G.A. § 36-35-6 (b) is ambiguous, the statute indicates that the state does not wish to give our cities the power to enact a distinctive law of contract. City of Atlanta v. McKinney, 265 Ga. 161, 454 S.E.2d 517 (1995).

Cities without power to adopt new charters changing form of government. — Under Ga. Const. 1976, Art. IX, Sec. III, Para. I (see Ga. Const. 1983, Art. IX, Sec. II, Para. II), and this section, cities do not have the power to adopt entirely new charters changing a cities' form of government. Thus, a new charter created by a special law does not contravene Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV.), which forbids the legislature from adopting a special law covering a subject matter dealt with by an existing general law. Jackson v. Inman, 232 Ga. 566, 207 S.E.2d 475 (1974) (see O.C.G.A. § 36-35-6).

Fundamental and substantive changes in city government cannot be made by a municipality under general home rule laws. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876 (1977).

General Assembly has reserved legislative power to enact new charters for existing cities when such charters include drastic changes in the composition and form of city government, and the election and terms of office of the members of the governing authority of cities. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876 (1977).

Retention by General Assembly of power to extend municipal boundaries. — Existence of prior statutes permitting the enlargement of boundaries does not deprive the General Assembly of the power to alter and extend municipal boundaries without the consent of the persons affected thereby. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967).

Constitutionality of local law extending municipal boundaries. — Local law extending municipal boundaries

does not violate the constitutional guarantee of due process of the law because the law subjects property owners in the area annexed to taxation by the municipality; nor does the law deny to such property owners equal protection of the law within the meaning of U.S. Const., amend. 14. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967).

Statute does not provide the sole method by which the General Assembly may amend the city charter so as to change city boundaries. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337 (1967).

There is no requirement, statutory or otherwise, that local annexation statute itself make provisions for myriad adjustments between the annexed territory and the municipality which the annexation necessitates. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876 (1977).

Both county governments and municipalities may levy taxes for public purposes connected with administration of county and city governments; as a corollary to this principle, it follows that counties and municipalities may appropriate and expend money for such public purpose. Peacock v. Georgia Mun. Ass'n, 247 Ga. 740, 279 S.E.2d 434 (1981).

Statute prohibiting wrecker service from refusing checks and credit cards constitutional. — City code section which made it unlawful for a wrecker service to refuse to accept checks and major credit cards is constitutional, and is not ultra vires under the home rule powers conferred by subsection (a) of O.C.G.A. § 36-35-6. Upton v. City of Atlanta, 260 Ga. 250, 392 S.E.2d 244 (1990).

Municipal court not improperly divested of jurisdiction. — Establishment by a city council of the Atlanta, Georgia, Bureau of Taxicabs and Vehicles for Hire, and the authorization of an administrative hearing procedure for the enforcement of the regulation of taxicabs was not an ultra vires act because it did not improperly divest the municipal court of jurisdiction to hear such cases under O.C.G.A. § 36-35-6(a)(6); the provisions of the city charter were consistent with the concept of concurrent jurisdiction, and the city had the power to regulate and license vehicles for hire and to create boards and commissions under the city charter. Atlanta Taxicab Co. Owners Ass'n v. City of Atlanta, 281 Ga. 342, 638 S.E.2d 307 (2006).

Cited in Dodson v. Graham, 462 F.2d 144 (5th Cir. 1972); State v. Golia, 235 Ga. 791, 222 S.E.2d 27 (1976); Lambert v. City of Atlanta, 242 Ga. 645, 250 S.E.2d 456 (1978); Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268 (1978); Porter v. City of Atlanta, 259 Ga. 526, 384 S.E.2d 631 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Ordinances creating status of domestic partnership. — Municipal ordinances which create the status of domestic partnership are violative of constitutional and statutory provisions precluding municipal legislation relating to legal status and relationship; thus, group health insurance coverage provided pursuant to such ordinances is violative of the public policy of this state. 1993 Op. Att'y Gen. No. 93-26.

City has home rule power to amend a city's charter by ordinance so as to remove from the charter a limitation on the millage rate which the city may use in levying ad valorem taxes. 1983 Op. Att'y Gen. No. U83-19.

City may amend a city's charter by resolution to increase the fines and imprisonment which may be imposed by a recorders court for violations of city ordinances. 1983 Op. Att'y Gen. No. U83-20.

Adding residency requirement for election to governing authority. — Municipality may not under the municipality's home rule powers amend the municipality's charter to impose a residency requirement for election to the municipal governing authority. 1985 Op. Att'y Gen. No. 85-45.

Date of municipal election may not be altered by municipality. — Date of a municipal general election constitutes an integral aspect of the procedure for election for members of the municipal governing authority, and thus may not be altered by the municipality under this chapter. 1975 Op. Att'y Gen. No. 75-140 (see O.C.G.A. Ch. 35, T. 36)

Municipality is not empowered, by virtue of former § 21-3-51, to amend its charter by ordinance with respect to the date of the municipality's municipal general election. 1977 Op. Att'y Gen. No. 77-33.

Effect of failure of prior election on acts validly conducted. — Municipality may treat an election ordered as a result of the failure of a prior election as a continuation of that prior election, recognizing those acts validly conducted. 1976 Op. Att'y Gen. No. 76-23.

No city acting under this chapter could alter court having jurisdiction over state offenses. 1971 Op. Att'y Gen. No. U71-30.

Garbage collection fee would not violate this section. 1970 Op. Att'y Gen. No. U70-192 (see O.C.G.A. § 36-35-6).

Limit on fine or forfeiture — O.C.G.A. § 36-35-6 expressly precludes a municipality from providing by either ordinance or charter amendment for a fine or forfeiture in excess of $1,000. 1999 Op. Att'y Gen. No. U99-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 14. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 111 et seq., 124 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 157, 195 et seq., 244, 245.

ALR. — Certificates by state authorizing operation of motorbus lines over section of highway as affected by its subsequent annexation to city, 154 ALR 1440.

36-35-6.1. Signs for privately owned businesses.

A municipality shall be prohibited from restricting the use of any language other than English on signs for privately owned businesses. This Code section shall not restrict the municipality's right to enact any other restrictions on signs. (Code 1981, § 41-1-10, enacted by Ga. L. 2001, p. 1196, § 5.1; Code 1981, § 36-35-6.1, as redesignated by Ga. L. 2002, p. 415, § 41.)

Cross references. — English designated as official language, § 50-3-100.

Editor's notes. — By resolution (Ga. L. 1986, p. 529), the General Assembly designated the English language as the official language of the State of Georgia.

36-35-7. Provisions of chapter general law; enactment of local or special laws on subject matters covered by chapter; effect of chapter upon amendment of municipal charters.

It is declared to be the intention of the General Assembly that the provisions of this chapter are general laws within the meaning of Article III, Section VI, Paragraph IV(a) of the Constitution. No local or special laws shall be enacted on subject matters over which municipal corporations are authorized to act pursuant to this chapter. Any provision of any municipal charter heretofore enacted covering subject

matters over which municipal corporations are authorized to act pursuant to this chapter shall be amended, modified, superseded, or repealed only in accordance with subsection (b) of Code Section 36-35-3. (Ga. L. 1972, p. 820, § 1; Ga. L. 1983, p. 3, § 57.)

Law reviews. — For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B.J. 333 (1967). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 95, 163 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 139, 142, 150 et seq.

36-35-8. Effect of conflict with Chapter 34.

In the event of a conflict between this chapter and Chapter 34 of this title, this chapter shall control.

CHAPTER 36

ANNEXATION OF TERRITORY

Article 1

General Provisions

Sec.
36-36-1. Applicability of article.
36-36-2. Effective date of annexation.
36-36-3. Report identifying annexed property; maps and surveys; technical assistance to municipalities; preclearance.
36-36-4. Creation of unincorporated islands prohibited; authorization to provide services or functions.
36-36-5. Restriction on annexation of unincorporated islands [Repealed].
36-36-6. Notice by municipal governing authority to county governing authority of proposed annexation.
36-36-7. Effect of annexation upon county owned property or facilities; notice; acquisition of property or facilities by municipality.
36-36-8. Effect of annexation upon utility service agreements.
36-36-9. Notice to be sent by certified mail or statutory overnight delivery, return receipt requested.
36-36-10. Legislative intent.
36-36-11. Effect of objection to land use following rezoning; minimum procedures for addressing issues.

Article 1A

Annexation by Local Act of the General Assembly

36-36-15. "Used for residential purposes" defined.
36-36-16. Procedures for annexation; referendum.

Article 2

Annexation Pursuant to Application by 100 Percent of Landowners

36-36-20. "Contiguous area" defined.
36-36-21. Annexation upon application of all land owners; filing of identification of annexed property with Department of Community Affairs and county governing authority; effect of annexation.
36-36-22. Deannexation; authority; procedures; identification; status of lands.
36-36-23. Annexation by a municipal corporation into an adjoining county.

Article 3

Annexation Pursuant to Application by Owners of 60 Percent of Land and 60 Percent of Electors

36-36-30. "Municipal corporation" defined.
36-36-31. "Contiguous area" defined; determination of aggregate external boundary.
36-36-32. Annexation upon application of owners of 60 percent of the land and 60 percent of the resident electors generally; application and signature requirements.
36-36-33. Annexation across county boundary lines prohibited.
36-36-34. Determination of compliance with article; notice upon noncompliance; proceedings upon compliance.
36-36-35. Plans and report for extension of services to area proposed to be annexed.
36-36-36. Requirement of public hearing; notice of time and place; persons entitled to be heard; right of property owner to withdraw consent.
36-36-37. Adoption of annexing ordinance.
36-36-38. Filing of identification of annexed property with county and Department of Community Affairs; applicability of

Sec.
municipal ad valorem taxes to annexed territory; effect of annexation.
36-36-39. Filing of petition for declaratory judgment to determine validity of annexation; judicial review.
36-36-40. Use of municipally owned utilities by residents of annexed territory.

Article 4

Annexation Pursuant to Resolution and Referendum

36-36-50. Purpose of article.
36-36-51. Legislative declaration of policy.
36-36-52. Definitions.
36-36-53. Authorization of annexation generally.
36-36-54. Standards and requirements for area proposed to be annexed.
36-36-55. Determination of compliance with standards and requirements; review of determination by superior court.
36-36-56. Plans and report for extension of services to area proposed to be annexed.
36-36-57. Adoption of annexation resolution by municipal corporation; contents of resolutions; approval, availability, and distribution of report relating to extension of services; conduct of public hearing.
36-36-58. Referendum for ratification or rejection of annexation resolution generally; procedure; subsequent annexation attempt.
36-36-59. Filing of identification of annexed territory with Department of Community Affairs and county governing authority.
36-36-60. Authorized expenditures relating to annexation.
36-36-61. Restriction on applicability of article.

Article 5

Limitation on Annexation of Areas Furnished Services or Included in Comprehensive Zoning Plan by Certain Counties

Sec.
36-36-70. Approval by governing authority in certain counties for annexation of areas furnished services or included in comprehensive zoning plan; right of property owners to file action for injunction [Repealed].

Article 6

Annexation of Unincorporated Islands

36-36-90. Definitions.
36-36-91. Area included in determining aggregate external boundary.
36-36-92. Annexation of unincorporated islands; procedures; provision of municipal services; preclearance by U.S. Justice Department.

Article 7

Procedure for Resolving Annexation Disputes

36-36-110. Applicability.
36-36-111. Notice of annexation.
36-36-112. Prohibition on a change in zoning or land use.
36-36-113. Objection to annexation; grounds and procedures.
36-36-114. Arbitration panel; composition and membership.
36-36-115. Meetings of arbitration panel; duties; findings and recommendations; compensation.
36-36-116. Appeal.
36-36-117. Annexation after conclusion of procedures; remedies for violations of conditions.
36-36-118. Abandonment of proposed annexation; remedies for violations of conditions.
36-36-119. Good faith negotiations; written agreement governing terms of annexation.

Cross references. — Assignment of annexed areas to retail electric suppliers, § 46-3-7.

Law reviews. — For article tracing the history of municipal annexation, and the General Assembly's role therein, see 2 Ga. L. Rev. 35 (1967). For article discussing the evolution of municipal annexation law in Georgia in light of Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868 (1970), see 5 Ga. L. Rev. 499 (1971). For survey article on local government law, see 34 Mercer L. Rev. 225 (1982). For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For article, "Lawyers Who Represent Local Governments," see 23 Ga. St. B.J. 58 (1987). For article, "Municipal De-Annexation: The Ins and the Outs," see 27 Ga. St. B.J. 118 (1991). For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

For note, "Annexation by Municipalities in Georgia," see 2 Mercer L. Rev. 423 (1951).

RESEARCH REFERENCES

ALR. — Proper remedy or procedure for attacking legality of proceedings annexing territory to municipal corporation, 18 ALR2d 1255.

ARTICLE 1

GENERAL PROVISIONS

Cross references. — Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

36-36-1. Applicability of article.

The procedures set forth in this article shall apply to all annexations pursuant to this chapter and to annexation by local Act of the General Assembly. (Code 1981, § 36-36-1, enacted by Ga. L. 1992, p. 2592, § 3.)

36-36-2. Effective date of annexation.

(a) Except as provided in subsection (c) of this Code section, all annexation other than by local Act shall become effective for ad valorem tax purposes on December 31 of the year during which such annexation occurred and for all other purposes shall become effective on the first day of the month following the month during which the requirements of Article 2, 3, or 4 of this chapter, whichever is applicable, have been met.

(b) Except as provided in subsection (c) of this Code section, annexation by local Act shall become effective for ad valorem tax purposes on December 31 of the year in which such local Act is approved by the Governor or becomes law without such approval and for all other purposes shall become effective at the time such local Act becomes effective or such later date as provided in such local Act.

(c)(1) Where an independent school system exists within the boundaries of a municipality, other effective dates may be established by the municipality solely for the purpose of determining school enrollment.

(2) Unless otherwise agreed in writing by a county governing authority and the municipal governing authority, where property zoned and used for commercial purposes is annexed into a municipality with an independent school system, the effective date for the purposes of ad valorem taxes levied for educational purposes shall be December 31 of the year after the year in which the requirements of Article 2, 3, or 4 of this chapter, whichever is applicable, have been met. (Code 1981, § 36-36-2, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 1996, p. 192, § 1; Ga. L. 1998, p. 856, § 1; Ga. L. 2004, p. 69, § 16.)

Editor's notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews. — For article on 2004 amendment of this Code section, see 21 Ga. St. U. L. Rev. 226 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Municipal government may not create rules that make annexations effective prior to the time annexations are made effective by O.C.G.A. § 36-36-2. 1998 Op. Att'y Gen. No. U98-1.

36-36-3. Report identifying annexed property; maps and surveys; technical assistance to municipalities; preclearance.

(a) The clerk, city attorney, or other person designated by the governing authority of any municipality annexing property shall file a report identifying any property annexed with the Department of Community Affairs and with the county governing authority of the county in which the property being annexed is located. Such reports shall be filed, at a minimum, not more than 30 days following the last day of the quarter in which the annexation becomes effective but may be filed more frequently. Each report shall include the following:

(1) The legal authority under which the annexation was accomplished, which shall be the ordinance or resolution number for any annexation effected pursuant to Article 2, 3, 4, or 6 of this chapter or the Act number if effected by local Act of the General Assembly;

(2) The name of the county in which the property being annexed is located; the total acreage annexed; the enactment date and effective date of the annexation ordinance, resolution, or local Act of the General Assembly;

(3) A letter from the governing authority of any municipality annexing property stating its intent to add the annexed area to maps provided by the United States Bureau of the Census during their next regularly scheduled boundary and annexation survey of the munici-

pality and stating that the survey and map will be completed as instructed and returned to the United States Bureau of the Census; and

(4) A list identifying roadways, bridges, and rights of way on state routes that are annexed and, if necessary, the total mileage annexed.

(b) The submission of a report required under subsection (a) of this Code section shall be made in writing and may also be made in electronic format to the Department of Community Affairs and to others as required, at the discretion of the submitting municipality.

(c)(1) The Department of Community Affairs shall notify the clerk, city attorney, or other person designated by the governing authority of the annexing municipality within 30 days after receipt of a report submitted under subsection (a) of this Code section if it determines the submission to be incomplete. The annexing municipality shall file a corrected report with the department and the county governing authority where the annexed property is located within 45 days from the date of the notice of any deficiency.

(2) No annexed area shall be added to the state map until such report has been properly submitted to the Department of Community Affairs. The Department of Community Affairs shall not provide a certification of annexation to the United States Census Bureau unless the governing authority of the annexing municipality has filed a completed report as required under subsection (a) of this Code section.

(3) Compliance with the requirements of this Code section shall be construed to be merely ancillary to and not an integral part of the annexation procedure such that an annexation shall, if otherwise authorized by law, become effective even though required filings under this Code section are temporarily delayed.

(d) The Department of Community Affairs may provide technical assistance to any municipality with respect to the requirements of subsection (a) of this Code section.

(e) The Department of Community Affairs shall maintain the annexation reports submitted to it pursuant to this Code section for two years. Annexation reports shall be subject to disclosure and inspection under Article 4 of Chapter 18 of Title 50 while maintained in the possession of the Department of Community Affairs. Two years after receipt of an annexation report from a municipality, the Department of Community Affairs shall transfer possession of such report to the Division of Archives and History for permanent retention.

(f) The clerk, city attorney, or other person designated by the governing authority of any municipality annexing property shall also

file a copy of the transmittal letter to the United States Department of Justice seeking preclearance, without the attachments to such letter, with the Department of Community Affairs and with the governing authority of the county in which the property being annexed is located. This subsection shall apply so long as a filing with the United States Department of Justice is required.

(g) The governing authority of any municipality annexing property shall add all annexed areas to maps provided by the United States Census Bureau during the next regularly scheduled boundary and annexation survey of the municipality, complete the survey and map as instructed, and return them to the United States Census Bureau within the time frame requested. (Code 1981, § 36-36-3, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 1; Ga. L. 2001, p. 811, § 1; Ga. L. 2002, p. 532, § 7; Ga. L. 2011, p. 583, § 10/HB 137; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2011 amendment, effective July 1, 2011, in paragraph (a)(2), inserted "the total acreage annexed;" and deleted "and" from the end; substituted "; and" for a period at the end of paragraph (a)(3); added paragraph (a)(4); and inserted "to the Department of Community Affairs and to others as required," in the middle of subsection (b).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "stating its intent" for "stating their intent" in paragraph (a)(3).

Administrative rules and regulations. — Data and mapping specifications, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Minimum Standards and Procedures for Local Comprehensive Planning, Sec. 110-12-1-.07.

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

36-36-4. Creation of unincorporated islands prohibited; authorization to provide services or functions.

(a) The creation of unincorporated islands as described in paragraph (1), (2), or (3) of this subsection shall be prohibited:

(1) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting the annexing municipality;

(2) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting any combination of the annexing municipality and one or more other municipalities; or

(3) Annexation or deannexation which would result in the creation of an unincorporated area to which the county would have no reasonable means of physical access for the provision of services

otherwise provided by the county governing authority solely to the unincorporated area of the county.

(b) When requested by resolution of the county governing authority, a municipality is authorized to provide any service or exercise any function within an unincorporated island. Such authority shall be in addition to any other authority of the municipality to provide extraterritorial services or functions. For purposes of this subsection, "unincorporated island" shall have the same meaning as contained in paragraph (3) of Code Section 36-36-90. (Code 1981, § 36-36-4, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "subsection" was substituted for "Code section" in subsection (a), and "subsection" was substituted for "subparagraph" in subsection (b).

Law reviews. — For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005); and 58 Mercer L. Rev. 267 (2006). For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005); and 58 Mercer L. Rev. 477 (2006).

JUDICIAL DECISIONS

Annexation not improper. — Strip of land excepted from annexation by a city was excepted not in an effort to evade the "entire parcel" requirement of O.C.G.A. § 36-36-20(a)(2), but to annex the property without creating an unincorporated island in violation of O.C.G.A. § 36-36-4(a); there was no showing that the landowner subdivided the property to evade the requirements of O.C.G.A. § 36-36-20(a)(2), and the appellate court affirmed a trial court's refusal to enter a judgment declaring that a city's annexation was null and void, declining to reach a finding that would, in effect, have left the landowner no way of having the landowner's property annexed. Fayette County v. Steele, 268 Ga. App. 13, 601 S.E.2d 403 (2004).

By annexing a portion of a larger unincorporated area that was already qualified as an "unincorporated island," a city did not "create" a newly-formed unincorporated island in violation of O.C.G.A. § 36-36-4(a)(1), but simply reduced the size of a previously-existing island. Calloway v. City of Fayetteville, 296 Ga. App. 200, 674 S.E.2d 66 (2009).

Annexation challenge rendered moot by city's annexation of additional property. — Taxpayer's challenge to a city's 2007 annexation of property based on the creation of an illegal unincorporated island within the new municipal boundaries, in violation of O.C.G.A. § 36-36-4, was moot under O.C.G.A. § 5-6-48(b)(3) because the city later remedied the violation by also annexing the unincorporated island. Scarbrough Group v. Worley, 290 Ga. 234, 719 S.E.2d 430 (2011).

36-36-5. Restriction on annexation of unincorporated islands.

Reserved. Repealed by Ga. L. 2000, p. 164, § 3, effective March 17, 2000.

Editor's notes. — This Code section was based on Code 1981, § 36-36-5, enacted by Ga. L. 1992, p. 2592, § 3.

36-36-6. Notice by municipal governing authority to county governing authority of proposed annexation.

Upon accepting an application for annexation pursuant to Code Section 36-36-21 or a petition for annexation pursuant to Code Section 36-36-32, or upon adopting a resolution calling for an annexation referendum pursuant to Code Section 36-36-57, the governing authority of the annexing municipality shall within five business days give written notice of the proposed annexation to the governing authority of the county wherein the area proposed for annexation is located. Such notice shall include a map or other description of the site proposed to be annexed sufficient to identify the area. Where the proposed annexation is to be effected by a local Act of the General Assembly, a copy of the proposed legislation shall be provided by the governing authority of the municipality to the governing authority of the county in which the property proposed to be annexed is located following the receipt of such notice by the governing authority of the municipality under subsection (b) of Code Section 28-1-14. (Code 1981, § 36-36-6, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 4; Ga. L. 2002, p. 985, § 3; Ga. L. 2004, p. 69, § 17.)

Editor's notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews. — For article on 2004 amendment of this Code section, see 21 Ga. St. U. L. Rev. 226 (2004).

36-36-7. Effect of annexation upon county owned property or facilities; notice; acquisition of property or facilities by municipality.

(a) Upon receiving notice of a proposed annexation pursuant to Code Section 36-36-6, the county governing authority shall notify the governing authority of the municipality within five business days of receipt of such notice if any county owned public facilities are located in the area proposed to be annexed.

(b) Except as otherwise provided in this Code section, ownership and control of county owned public properties and facilities are not diminished or otherwise affected by annexation of the area in which the county owned public property or facility is located.

(c) Whenever a municipality annexes land on both sides of a county road right of way, the annexing municipality shall assume the ownership, control, care, and maintenance of such right of way unless the municipality and the county agree otherwise by joint resolution.

(d) Whenever county owned property or a county owned facility within an area annexed by a municipality is no longer usable for service

to the unincorporated area of the county as a result of the annexation, the annexing municipality shall be required to acquire said property from the county governing authority under the following conditions:

(1) The annexation must be final;

(2) The county property or facility must be funded by revenues derived from the unincorporated areas of the county and must be used to provide services solely to the unincorporated areas of the county;

(3) The county adopts a resolution declaring that the property or facility is no longer usable for service to the unincorporated area of the county as a result of the annexation; and

(4) Unless otherwise provided by mutual agreement, the county shall be compensated in an amount equal to the fair market value of the property or facility which is no longer usable for service to the unincorporated area. If the county and municipality fail to agree as to the fair market value of the property or facility within 180 days following adoption of the resolution required by paragraph (3) of this subsection, the question of fair market value shall be submitted to a special master appointed by the superior court of the county in which the property or facility is located for determination of value. (Code 1981, § 36-36-7, enacted by Ga. L. 1992, p. 2592, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "of this subsection" was inserted in paragraph (d)(4).

Law reviews. — For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005); and 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Construction with O.C.G.A. § 36-34-5. — In a dispute concerning a city's desire to access water lines owned by a county but located in an area annexed by the city, it was determined, upon discerning the interplay between O.C.G.A. §§ 36-34-5 and 36-36-7(b), that the city was not permitted access to the line in question absent compliance with one of the three methods enumerated in O.C.G.A. § 36-34-5, namely by gift, purchase, or the exercise of the right of eminent domain. Cobb County v. City of Smyrna, 270 Ga. App. 471, 606 S.E.2d 667 (2004).

36-36-8. Effect of annexation upon utility service agreements.

No annexation shall invalidate any utility service agreement between a county and an annexing municipality in effect on July 1, 1992, except by mutual written consent. (Code 1981, § 36-36-8, enacted by Ga. L. 1992, p. 2592, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "July 1, 1992" was substituted for "the effective date of this chapter".

36-36-9. Notice to be sent by certified mail or statutory overnight delivery, return receipt requested.

All notices to a municipal or county governing authority required pursuant to this chapter shall be sent by certified mail or statutory overnight delivery, return receipt requested. (Code 1981, § 36-36-9, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

36-36-10. Legislative intent.

It is the express intent of the General Assembly in enacting the provisions of this chapter to provide for alternative methods for annexing or deannexing an area or areas into or from the corporate limits of a municipality. Except as otherwise expressly provided in this chapter, no provision of this chapter relating to annexation or deannexation by any such alternate method is intended to or shall be construed to in any way restrict, limit, or otherwise impair the authority of the General Assembly to annex or deannex by local Act. (Code 1981, § 36-36-10, enacted by Ga. L. 1997, p. 540, § 1.)

JUDICIAL DECISIONS

Constitutionality. — Provisions of former O.C.G.A. §§ 36-70-24(4)(c) and 36-36-11, pertaining to the establishment of a dispute resolution process when a bona fide land use dispute arises between a city and county over the use of land which is the subject of annexation, do not violate Ga. Const. 1983 Art. IX, Sec. II, Par. IV. Higdon v. City of Senoia, 273 Ga. 83, 538 S.E.2d 39 (2000) (decided prior to 2004 amendment of O.C.G.A. §§ 36-70-24 and 36-36-11).

36-36-11. Effect of objection to land use following rezoning; minimum procedures for addressing issues.

(a) The intent of this Code section is to provide a mechanism to resolve disputes over land use arising out of the rezoning of property to a more intense land use in conjunction with or subsequent to annexation in order to facilitate coordinated planning between counties and municipalities particularly with respect to areas contiguous to municipal boundaries; provided, however, that on and after September 1, 2007, such dispute resolutions shall be governed by the provisions of Article 7 of this chapter and the provisions of this Code section shall be limited to proceedings initiated prior to such date.

(b) As used in this Code section, the term "objection" means an objection to a proposed change in land use which results in a substan-

tial change in the intensity of the allowable use of the property or a change to a significantly different allowable use.

(c)(1) When an initial zoning of property is sought pursuant to subsection (d) of Code Section 36-66-4 or when the rezoning of annexed property is sought within one year of the effective date of the annexation, the municipal corporation shall give notice to the county governing authority within seven calendar days of the filing of the application for initial zoning or rezoning. Upon receipt of such notice, the county governing authority shall have seven calendar days to notify the municipality in writing of its intent to raise an objection to the proposed zoning or rezoning of the property and shall specify the basis for the objection. If the county governing authority serves notice of its intent to object, then the county governing authority shall have ten calendar days from the date of the county's notice to document in writing the nature of the objection specifically identifying the basis for the objection including any increased service delivery or infrastructure costs. The absence of a written notice of intent to object or failure to document the nature of the objection shall mean the municipal corporation may proceed with the zoning or rezoning and no subsequent objections under this process may be filed for the zoning or rezoning under consideration.

(2) Commencing with the date of receipt by the municipality of the county's documented objections, representatives of the municipal corporation and the county shall have 21 calendar days to devise mitigating measures to address the county's specific objections to the proposed zoning or rezoning. The governing authority of the municipal corporation and the governing authority of the county may agree on mitigating measures or agree in writing to waive the objections at any time within the 21 calendar day period, in which event the municipal corporation may proceed with the zoning or rezoning in accordance with such agreement; or, where an initial zoning is proposed concurrent with annexation, the municipality may approve, deny, or abandon the annexation of all or parts of the property under review.

(3) If the representatives of the municipal corporation and the county fail to reach agreement on the objections and mitigating measures within the 21 calendar day period, either the governing authority of the municipal corporation or the governing authority of the county may insist upon appointment of a mediator within seven calendar days after the end of the 21 day period to assist in resolving the dispute. The mediator shall be mutually selected and appointed within seven calendar days of either party's timely, written insistence on a mediator. The party insisting on use of the mediator shall bear two-thirds of the expense of the mediation and the other party shall

bear one-third of the expense of the mediation. If both the municipality and the county insist on mediation, the expenses of mediation shall be shared equally. The mediator shall have up to 28 calendar days to meet with the parties to develop alternatives to resolve the objections. If the municipal corporation and the county agree on alternatives to resolve the objections, the municipal corporation may proceed in accordance with the mediated agreement.

(4) If the objections are not resolved by the end of the 28 day period, the municipal governing authority or the county governing authority may, no later than seven calendar days after the conclusion of such 28 day period, request review by a citizen review panel. The citizen review panel shall be an independent body comprised of one resident of the municipal corporation appointed by the municipal governing authority, one resident of the county appointed by the county governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the municipal and county appointees to the citizen review panel. No elected or appointed officials or employees, contractors, or vendors of a municipality or county may serve on the citizen review panel. If a request for review by a citizen review panel is made, the mediator shall make arrangements to appear personally at the first meeting of the panel and brief the panel members regarding the objections and proposed mitigating measures or provide a written presentation of such objections and proposed mitigating measures to the panel members on or before the date of such first meeting, whichever the mediator deems appropriate. The citizen review panel shall meet at least once but may conduct as many meetings as necessary to complete its review within a 21 calendar day period. All meetings of the citizen review panel shall be open to the public pursuant to Chapter 14 of Title 50. Within 21 calendar days of the request for review, the citizen review panel shall complete its review of the evidence submitted by the county and the municipality concerning the objections and proposed mitigating measures and shall issue its own recommendations.

(5) The citizen review panel shall recommend approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. Where an initial zoning is proposed concurrent with annexation, the panel may also recommend that the annexation be approved or abandoned. The findings and recommendations of the citizen review panel shall not be binding.

(6) Following receipt of the recommendations of the citizen review panel, the municipal corporation may:

(A) Zone or rezone all or parts of the property under review;

(B) Zone or rezone all or parts of the property under review with mitigating measures;

(C) Deny the zoning or rezoning of all or parts of the property under review; or

(D) Any combination of the foregoing.

Where an initial zoning is proposed concurrent with annexation, the municipality may also approve, deny, or abandon the annexation of all or parts of the property under review.

(7) At any time during the process set forth in this Code section, the county or municipality may file a petition in superior court seeking sanctions against a party for any objections or proposed mitigating measures that lack substantial justification or that were interposed for purposes of delay or harassment. Such petition shall be assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit. The visiting or senior judge shall determine whether any objections or proposed mitigating measures lack substantial justification or were interposed for delay or harassment and shall assess against the party raising such objection or proposing or objecting to such mitigating measures the full cost of attorney fees and other costs incurred by the other party in responding to the objections or proposed mitigating measures.

(8) Unless otherwise agreed, a zoning or rezoning decision made pursuant to this Code section shall not be effective until 28 calendar days following the completion of the process authorized by this Code section and the zoning or rezoning vote by the municipal governing authority.

(9) During the process set forth in this Code section, the municipal corporation may proceed with notice, hearings, and other requirements for zoning or rezoning in accordance with the municipality's zoning ordinance.

(d) If the annexation, zoning, or rezoning is denied or abandoned based in whole or in part on the county's objections, the county shall not zone or rezone the property or allow any use of a similar or greater density or intensity to that proposed for the property which had been objected to by the county pursuant to this Code section for a one-year period after the denial or abandonment.

(e) The process set forth in subsection (c) of this Code section specifies minimum procedures for addressing objections. However, a county and a municipality may agree to additional procedures by resolution of the county and municipal governing authorities. Notwithstanding subsections (c) and (d) of this Code section, any agreement to resolve county objections to a proposed land use of an area to be

annexed into a municipality which agreement was in effect on January 1, 2004, and which includes a provision whereby the county and a municipality agree to be bound by the recommendations of an annexation appeals board shall remain in effect until the parties agree otherwise. (Code 1981, § 36-36-11, enacted by Ga. L. 1998, p. 856, § 2; Ga. L. 2004, p. 69, § 18; Ga. L. 2007, p. 292, § 1/HB 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, paragraphs (1) through (9) of subsection (b) were redesignated as subsection (c), subsections (c) and (d) were redesignated as subsections (d) and (e), and "calendar" was substituted for "calender" in paragraph (c)(1).

Editor's notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews. — For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000). For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005) and 60 Mercer L. Rev. 457 (2008). For article on 2004 amendment of this Code section, see 21 Ga. St. U. L. Rev. 226 (2004). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Cited in Baker v. City of Marietta, 271 Ga. 210, 518 S.E.2d 879 (1999); Higdon v. City of Senoia, 273 Ga. 83, 538 S.E.2d 39 (2000).

ARTICLE 1A

ANNEXATION BY LOCAL ACT OF THE GENERAL ASSEMBLY

36-36-15. "Used for residential purposes" defined.

As used in this article, the term "used for residential purposes" means any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (Code 1981, § 36-36-15, enacted by Ga. L. 1996, p. 192, § 2.)

36-36-16. Procedures for annexation; referendum.

(a) Local Acts of the General Assembly proposing annexation of any area comprised of more than 50 percent by acreage of property used for residential purposes shall be adopted pursuant to the procedures of this article.

(b) Such bill may include a requirement for referendum approval of the annexation under such terms and conditions as specified in such local law; provided, however, if the number of residents in the area to be annexed exceeds 3 percent of the population of the municipal corporation or 500 people, whichever is less, as determined by the most recent

United States decennial census, referendum approval shall be required in the area to be annexed. The cost of holding the referendum required by this article shall be paid from funds of the municipality proposing the annexation. (Code 1981, § 36-36-16, enacted by Ga. L. 1996, p. 192, § 2; Ga. L. 2002, p. 985, § 4.)

ARTICLE 2

ANNEXATION PURSUANT TO APPLICATION BY 100 PERCENT OF LANDOWNERS

Cross references. — Time limit for deannexed by the General Assembly, reannexing property which has been § 36-35-2(b).

36-36-20. "Contiguous area" defined.

(a) As used in this article, the term "contiguous area" means, at the time the annexation procedures are initiated, any area that meets the following conditions:

(1) At least one-eighth of the aggregate external boundary or 50 feet of the area to be annexed, whichever is less, either abuts directly on the municipal boundary or would directly abut on the municipal boundary if it were not otherwise separated from the municipal boundary by lands owned by the municipal corporation or some other political subdivision, by lands owned by this state, or by the definite width of:

(A) Any street or street right of way;

(B) Any creek or river; or

(C) Any right of way of a railroad or other public service corporation

which divides the municipal boundary and any area proposed to be annexed;

(2) The entire parcel or parcels of real property owned by the person seeking annexation is being annexed; provided, however, that lots shall not be subdivided in an effort to evade the requirements of this paragraph; and

(3) The private property annexed, excluding any right of way of a railroad or other public service corporation, complies with the annexing municipality's minimum size requirements, if any, to construct a building or structure occupiable by persons or property under the policies or regulations of the municipal development, zoning, or subdivision ordinances.

(b) Notwithstanding the limitations of subsection (a) of this Code section, an area may be annexed by agreement between the municipal

corporation and the governing body of the county in which the territory proposed to be annexed is located.

(c) If, at the time annexation procedures are initiated, the entire area to be annexed is owned by the municipal governing authority to which the area is to be annexed and if the annexation of municipally owned property is approved by resolution of the governing authority of the county wherein the property is located, then the term "contiguous area" shall mean any area which, at the time annexation procedures are initiated, abuts directly on the municipal boundary or which would directly abut on the municipal boundary if it were not otherwise separated from the municipal boundary by lands owned by the municipal corporation or some other political subdivision, by lands owned by this state, or by the definite width or by the length of:

(1) Any street or street right of way;

(2) Any creek or river; or

(3) Any right of way of a railroad or other public service corporation

which divides the municipal boundary and any area proposed to be annexed. (Ga. L. 1962, p. 119, § 2; Ga. L. 1976, p. 1011, § 1; Code 1981, § 36-36-1; Code 1981, § 36-36-20, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 5.)

Editor's notes. — Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-1 as present Code Section 36-36-20.

Law reviews. — For article discussing municipal annexation and the concept of contiguity, see 9 Ga. L. Rev. 167 (1974). For article questioning the constitutionality of this Code section, see 10 Ga. L. Rev. 169 (1975). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005); and 58 Mercer L. Rev. 267 (2006). For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005); and 58 Mercer L. Rev. 477 (2006).

JUDICIAL DECISIONS

Annexation not improper. — Strip of land excepted from annexation by a city was excepted not in an effort to evade the "entire parcel" requirement of O.C.G.A. § 36-36-20(a)(2), but to annex the property without creating an unincorporated island in violation of O.C.G.A. § 36-36-4(a); there was no showing that the landowner subdivided the property to evade the requirements of O.C.G.A. § 36-36-20(a)(2), and the appellate court affirmed a trial court's refusal to enter a judgment declaring that a city's annexation was null and void, declining to reach a finding that would, in effect, have left the landowner no way of having the landowner's property annexed. Fayette County v. Steele, 268 Ga. App. 13, 601 S.E.2d 403 (2004).

County estopped to oppose annexation. — County was estopped from challenging a city's annexation of county roads by the county's failure to oppose the annexation for 20 years. The county had approved the annexation, and the city, with the county's knowledge, maintained the roads, patrolled the roads, set speed limits, and otherwise exercised control

over the roads. City of Holly Springs v. Cherokee County, 299 Ga. App. 451, 682 S.E.2d 644 (2009).

Annexation not ultra vires. — City's failure to finalize the city's annexation of county roads by adopting an ordinance, preparing a survey, and filing the annexation with the Georgia Secretary of State were errors of omission, not ultra vires actions contrary to former O.C.G.A. §§ 36-36-1 and 36-36-2 (see O.C.G.A. §§ 36-36-20 and 36-36-21) which the city had no power to take. Therefore, O.C.G.A. § 45-6-5 did not preclude the city from contending that the county was estopped from challenging the annexation. City of Holly Springs v. Cherokee County, 299 Ga. App. 451, 682 S.E.2d 644 (2009).

Limited applicability of section. — Obvious purpose of this definition of "contiguous" is to explain the Ga. L. 1962, p. 119, § 1 (see O.C.G.A. § 36-36-21) provision for annexing to the existing corporate limits unincorporated areas "contiguous to the existing corporate limits." This provision has no reference to any lands where the owners sign no application to annex. The law's sole purpose is to say that although a road, creek, river, interstate highway, railroad, or even other municipal property of another political subdivision passes between the lands of "A" and the corporate boundary, "A's" land is contiguous for the purpose of annexing the land when "A" signs an application therefor. City of Adel v. Georgia Power Co., 224 Ga. 232, 161 S.E.2d 297 (1968).

Cited in City of Gainesville v. Hall County Bd. of Educ., 233 Ga. 77, 209 S.E.2d 637 (1974); City of Marietta v. Cobb County Sch. Dist., 237 Ga. 518, 228 S.E.2d 894 (1976); Paulding County v. City of Hiram, 240 Ga. 220, 240 S.E.2d 71 (1977); City of Cartersville v. Bartow County Sch. Dist., 145 Ga. App. 129, 243 S.E.2d 293 (1978); City of Ft. Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Property of one of owners must abut directly upon municipal boundary. — Upon consideration of Ga. L. 1962, p. 119, § 2 (see O.C.G.A. § 36-36-20) in conjunction with Ga. L. 1962, p. 119, § 1 (now O.C.G.A. § 36-36-21), in order for a municipal corporation to annex property, at least one of the owners of the property to be annexed must have property which abuts directly on the municipal boundary, or which would otherwise abut directly on the municipal boundary except for the fact that the property is separated by a street, street right of way, creek, river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state. Right of way for a state-aid road which is owned by the state would qualify as lands owned by the State of Georgia. 1968 Op. Att'y Gen. No. 68-49.

It is necessary for owner of road to sign or consent to petition for annexation; neither the State Transportation Board nor the commissioner of transportation has authority to consent for such annexation. 1969 Op. Att'y Gen. No. 69-81.

Signing of petition. — Neither State Highway Board (now State Transportation Board) nor director of State Highway Department (now Commissioner of Transportation) has authority to sign petition for annexation of right of way of state-aid road as part of the corporate limits of a municipality of this state. 1968 Op. Att'y Gen. No. 68-217.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 53 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 63 et seq.

ALR. — What land is contiguous or adjacent to municipality so as to be subject to annexation, 49 ALR3d 589.

36-36-21. Annexation upon application of all land owners; filing of identification of annexed property with Department of Community Affairs and county governing authority; effect of annexation.

Authority is granted to the governing bodies of the several municipal corporations of this state to annex to the existing corporate limits thereof unincorporated areas contiguous to the existing corporate limits at the time of such annexation, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed applications of all of the owners of all of the land, except the owners of any public street, road, highway, or right of way, proposed to be annexed, containing a complete description of the lands to be annexed. Lands to be annexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits. When such application is acted upon by the municipal authorities and the land is, by ordinance, annexed to the municipal corporation, an identification of the property so annexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3. When so annexed, such lands shall constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by local Act of the General Assembly. Except as provided in subsection (c) of Code Section 36-36-20, nothing in this article shall be construed to authorize annexation of the length of any public right of way except to the extent that such right of way adjoins private property otherwise annexed by the municipal corporation. (Ga. L. 1962, p. 119, § 1; Ga. L. 1969, p. 504, § 1; Code 1981, § 36-36-2; Code 1981, § 36-36-21, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 6.)

Law reviews. — For article questioning the constitutionality of this Code section, see 10 Ga. L. Rev. 169 (1975). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For comment, "Hamlets: Expanding the Fair Share Doctrine Under Strict Home Rule Constitutions," see 49 Emory L.J. 255 (2000).

JUDICIAL DECISIONS

Analysis

General Consideration
Land Subject to Annexation

General Consideration

General Assembly intended that a liberal policy apply in this area. Powers v. City of Cordele, 143 Ga. App. 363, 238 S.E.2d 721 (1977).

General Assembly is authorized to delegate power of annexation to municipalities under O.C.G.A. § 36-36-21. Cooper v. City of Gainesville, 248 Ga. 269, 282 S.E.2d 322 (1981).

Purpose of this section in delegating limited power of annexation to municipalities is to permit municipalities to make a self-determination in this regard. Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868 (1970) (see O.C.G.A. § 36-36-21).

Limitations on power of annexation. — When the municipality exercises the delegated power of annexation the municipality is exercising the legislative power of the General Assembly and is limited only by the terms of the delegation itself and by the rule that the municipality's exercise must be lawful and reasonable and not in violation of any constitutional inhibition. Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868 (1970).

Comparison of 100 percent and 60 percent methods of annexation. — Requirements of the 100 percent method and the 60 percent method are different. In the 100 percent method, the land being annexed need only abut the municipal boundaries. In the 60 percent method, the land being annexed must coincide with the municipal boundaries on one-eighth of the municipality's aggregate external boundary. City of Marietta v. Cobb County Sch. Dist., 237 Ga. 518, 228 S.E.2d 894 (1976).

Applicability to counties of 100,000 or more. — Municipalities either wholly or partly within county having population of 100,000 or more persons cannot annex territory under provisions of this section. Jones v. City of College Park, 223 Ga. 778, 158 S.E.2d 384 (1967) (see O.C.G.A. § 36-36-21).

Limited applicability of definition of contiguous area. — Obvious purpose of the definition of "contiguous" in Ga. L. 1962, p. 119, § 2 (now O.C.G.A. § 36-36-20) is to explain the provision of Ga. L. 1962, p. 119, § 1 (see O.C.G.A. § 36-36-21) for annexing to the existing corporate limits unincorporated areas "contiguous to the existing corporate limits." This provision has no reference to any lands when the owners sign no application to annex. This provision's sole purpose is to say that although a road, creek, river, interstate highway, railroad, or even other municipal property of another political subdivision passes between the lands of "A" and the corporate boundary, "A's" land is contiguous for the purpose of annexing the land when "A" signs an application therefor. City of Adel v. Georgia Power Co., 224 Ga. 232, 161 S.E.2d 297 (1968).

Word "owner" is defined to mean "the record title holder of the fee simple title, or his legal representative." City of Cartersville v. Bartow County Sch. Dist., 145 Ga. App. 129, 243 S.E.2d 293 (1978).

Failure of annexation voids subsequently related annexation. — Failure of city's annexation of railroad right of way due to applicant's lack of fee simple ownership also invalidated subsequent annexation of property which became contiguous to city only by virtue of the earlier annexation of the right of way. City of Jefferson v. Town of Pendergrass, 176 Ga. App. 769, 337 S.E.2d 343 (1985).

Annexation voided when procedures not followed. — Defendants attempt to annex certain properties into the corporate limits of the city and establish a new zoning district was voided because the procedural requirements of O.C.G.A. § 36-66-4 (a) and (b) and O.C.G.A. § 36-36-21 were not met. City of Byron v. Betancourt, 242 Ga. App. 71, 528 S.E.2d 841 (2000).

County estopped to oppose annexation. — County was estopped from challenging a city's annexation of county roads by the county's failure to oppose the annexation for 20 years. The county had approved the annexation, and the city, with the county's knowledge, maintained the roads, patrolled the roads, set speed limits, and otherwise exercised control over the roads. City of Holly Springs v. Cherokee County, 299 Ga. App. 451, 682 S.E.2d 644 (2009).

Annexation not ultra vires. — City's failure to finalize the city's annexation of

General Consideration (Cont'd)

county roads by adopting an ordinance, preparing a survey, and filing the annexation with the Georgia Secretary of State were errors of omission, not ultra vires actions contrary to former O.C.G.A. §§ 36-36-1 and 36-36-2 (see O.C.G.A. §§ 36-36-20 and 36-36-21) which the city had no power to take. Therefore, O.C.G.A. § 45-6-5 did not preclude the city from contending that the county was estopped from challenging the annexation. City of Holly Springs v. Cherokee County, 299 Ga. App. 451, 682 S.E.2d 644 (2009).

Cited in Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971); City of Gainesville v. Hall County Bd. of Educ., 233 Ga. 77, 209 S.E.2d 637 (1974); City of Ft. Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

Land Subject to Annexation

Under this method of annexation the only property involved is that of the owner who applies for annexation. This section merely gives the owner a free election as to whether to have the land within or without the municipality, provided the land is contiguous to an area of the city and the city is willing to annex. Paulding County v. City of Hiram, 240 Ga. 220, 240 S.E.2d 71 (1977) (see O.C.G.A. § 36-36-21).

Annexation in steps. — Municipality, utilizing the 100 percent method of annexation may annex a street, then annex tracts abutting upon that street. Such areas of land meet the requirement of being "contiguous to the existing corporate limits" when they adjoin and abut directly on a street or highway which has been made a part of the corporate limits. City of Marietta v. Cobb County Sch. Dist., 237 Ga. 518, 228 S.E.2d 894 (1976).

Inclusion of all property. — This section imposes no requirement that all of the property located within the outer perimeter of such area be included within the annexation. City of Cartersville v. Bartow County Sch. Dist., 145 Ga. App. 129, 243 S.E.2d 293 (1978) (see O.C.G.A. § 36-36-21).

Presumption of dedication of land for public streets. — When the owner of a tract of land subdivides the land into lots, and records a map or plat showing such lots with designated streets, and sells lots with reference to such map or plat, the owner will be presumed to have expressly dedicated the streets designated on the map to the public. Young v. Sweetbriar, Inc., 222 Ga. 262, 149 S.E.2d 474 (1966).

How acceptance by municipality shown. — When an owner of land makes an express dedication of a particular portion thereof for use as a public street, its acceptance may be shown by any act of the municipality recognizing the existence of the street as such, and treating it as one of the streets of the city. Young v. Sweetbriar, Inc., 222 Ga. 262, 149 S.E.2d 474 (1966).

Grantor estopped to deny grantees right to use streets. — When a grantor sells lots of land, and in the grantor's deeds describes the lots as bounded by streets, not expressly mentioned in the deeds, but shown upon a plat therein referred to as laid out in a subdivision of the grantor's land, the grantor is estopped to deny the grantee's right to use the streets delineated in such plat. Those claiming under such conveyances are estopped from denying the existence of the streets so delineated upon the plat of the subdivision and given as boundaries of lots acquired by these and others from the grantor or those claiming under the grantor. Young v. Sweetbriar, Inc., 222 Ga. 262, 149 S.E.2d 474 (1966).

Dedication cannot be abandoned by nonuser. — When land is dedicated to and accepted by a city for street purposes, such dedication inures to the benefit of the public and abutting property owners who bought abutting property by reference to plats showing such streets. Such dedication cannot be abandoned by the dedicatee by mere nonuser. Young v. Sweetbriar, Inc., 222 Ga. 262, 149 S.E.2d 474 (1966).

Sale does not revoke dedication. — After an owner of land has made a dedication of designated land for public streets, and the public authorities have accepted the dedication, the owner cannot revoke the dedication by a sale of the land. Young v. Sweetbriar, Inc., 222 Ga. 262, 149 S.E.2d 474 (1966).

Preemption based on authority of Public Service Commission. — Regu-

lation of the construction of electric power substations by municipalities was preempted based on the authority given to the Public Service Commission under O.C.G.A. § 46-2-20. City of Buford v. Ga. Power Co., 276 Ga. 590, 581 S.E.2d 16 (2003).

OPINIONS OF THE ATTORNEY GENERAL

It is necessary for owner of road to sign or consent to petition for annexation; neither the State Transportation Board nor the commissioner of transportation has authority to consent for such annexation. 1969 Op. Att'y Gen. No. 69-81.

Property of one owner must abut directly upon municipal boundary. — Upon consideration of Ga. L. 1962, p. 119, § 2 (now O.C.G.A. § 36-36-20), in conjunction with Ga. L. 1962, p. 119, § 1 (see O.C.G.A. § 36-36-21), in order for a municipal corporation to annex property, at least one of the owners of the property to be annexed must have property which abuts directly on the municipal boundary, or which would otherwise abut directly on the municipal boundary except for the fact that the property is separated by a street, street right of way, creek, river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state. Right of way for a state-aid road which is owned by the state would qualify as lands owned by the state. 1968 Op. Att'y Gen. No. 68-49.

Annexation of state park. — Municipality must have specific legislative approval to annex state park. 1968 Op. Att'y Gen. No. 68-211.

Consent referred to in this section would have to come from the General Assembly. 1968 Op. Att'y Gen. No. 68-211 (see O.C.G.A. § 36-36-21).

Signing of petition. — Neither State Highway Board (now State Transportation Board) nor director of State Highway Department (now commissioner of transportation) has authority to sign petition for annexation of right of way of state-aid road as part of the corporate limits of a municipality of this state. 1968 Op. Att'y Gen. No. 68-217.

Requirements for inclusion of boundary street in annexation ordinance. — Under the particular annexation ordinances adopted by a city, in which one boundary of the area to be annexed is a public street, such public street is not itself included within the corporate boundaries unless the annexation ordinance specifically includes the street within such boundaries, and the city police are not authorized to patrol or to make cases on any such street which lies outside the municipal boundary. 1975 Op. Att'y Gen. No. U75-64.

"Owners" includes transferors of deeds to secure debt. — This section providing for the annexation of certain lands includes within "owners" the transferors of deeds to secure debt, rather than the grantees in such deeds. 1972 Op. Att'y Gen. No. U72-105 (see O.C.G.A. § 36-36-21).

Use of adjective "public" preceding "streets" necessarily applies to other ways mentioned. 1974 Op. Att'y Gen. No. U74-75.

Filing of copy of annexation ordinance with Secretary of State is for informational purposes only. 1981 Op. Att'y Gen. No. 81-21.

Requirement that copy of annexation ordinance be filed with Secretary of State is ancillary to annexation procedure rather than integral. 1981 Op. Att'y Gen. No. 81-21.

Time of filing ordinance does not affect time annexation takes effect. Municipal annexation of property takes effect even though filing of copy of ordinance with Secretary of State, as required by O.C.G.A. § 36-36-21, is delayed or omitted. 1981 Op. Att'y Gen. No. 81-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 38 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 60 et seq., 73, 74, 80.

ALR. — Power to extend boundaries of municipal corporations, 64 ALR 1335.

Estoppel to question validity of proceedings extending boundaries of municipality, 101 ALR 581.

Power to detach land from municipal corporations, towns, or villages, 117 ALR 267.

Capacity to attack the fixing or extension of municipal limits or boundary, 13 ALR2d 1279; 17 ALR5th 195.

What zoning regulations are applicable to territory annexed to a municipality, 41 ALR2d 1463.

Zoning: validity and construction of provisions of zoning statute or ordinance regarding protest by neighboring property owners, 7 ALR4th 732.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision, 17 ALR5th 195.

36-36-22. Deannexation; authority; procedures; identification; status of lands.

Authority is granted to the governing bodies of the several municipal corporations of this state to deannex an area or areas of the existing corporate limits thereof, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed applications of all of the owners of all of the land, except the owners of any public street, road, highway, or right of way, proposed to be deannexed, containing a complete description of the lands to be deannexed and the adoption of a resolution by the governing authority of the county in which such property is located consenting to such deannexation. Lands to be deannexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits. When such application is acted upon by the municipal authorities and the land is, by ordinance, deannexed from the municipal corporation, an identification of the property so deannexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3. When so deannexed, such lands shall cease to constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by local Act of the General Assembly. (Code 1981, § 36-36-22, enacted by Ga. L. 1994, p. 652, § 1; Ga. L. 2000, p. 164, § 7.)

36-36-23. Annexation by a municipal corporation into an adjoining county.

(a) Annexation pursuant to this article by a municipal corporation into an adjoining county in which the municipality is not already located shall be accomplished in accordance with this Code section.

Within ten business days of receiving an application for annexation, the municipal corporation shall provide written notice to the county governing authority of the adjoining county of its intent to annex into the county. Such notice shall include a map or other description of the land proposed for annexation sufficient for the county to identify the location of the proposed annexation. A meeting between the county governing authority and municipal governing authority shall be held to discuss the proposed annexation if the county governing authority files a written request for such meeting with the municipal governing authority within 15 days of receipt of the notice of the proposed annexation. The requested meeting shall be held within 15 days of the request by the county unless otherwise agreed to by the county and the municipality.

(b) No municipality may annex into an adjoining county in which the municipality is not already located unless otherwise agreed to by the county governing authority of the adjoining county. Such annexation shall be deemed approved, unless the county governing authority adopts a resolution opposing the annexation within 30 days following the earlier of:

(1) The completion of the meeting between the municipal and county governing authorities, if any, pursuant to subsection (a) of this Code section; or

(2) Thirty days after notice of the proposed annexation from the municipal corporation to the county governing authority, if no meeting is requested by the county governing authority.

(c) In making its decision, the county governing authority shall consider the following factors:

(1) Whether the annexation ordinance is reasonable for the long-range economic and overall well-being of the counties, school districts, and municipalities affected by the annexation;

(2) Whether the health, safety, and welfare of property owners and citizens of the county, municipalities, and area proposed to be annexed will be negatively affected by the annexation;

(3) Whether the proposed annexation has any negative fiscal impact on the county, school districts, and other municipalities that have not been mitigated by an agreement; and

(4) The interests of the property owner seeking annexation.

(d) If the county governing authority disapproves the annexation, the municipal corporation may challenge the disapproval by filing a complaint in the superior court of the adjoining county into which such annexation has been proposed. The challenge shall be heard by either

a judge or senior judge who is not from the circuit in which either the county or the municipality is located. If the court finds by a preponderance of the evidence that the determination by the county based upon the factors enumerated in subsection (c) of this Code section is correct, then the denial by the county shall be sustained. If the denial is not sustained, the annexation may proceed. (Code 1981, § 36-36-23, enacted by Ga. L. 2000, p. 164, § 8.)

ARTICLE 3

ANNEXATION PURSUANT TO APPLICATION BY OWNERS OF 60 PERCENT OF LAND AND 60 PERCENT OF ELECTORS

Editor's notes. — Former Code Section 36-36-22.1, pertaining to limitation on annexation by certain municipalities, was repealed pursuant to subsection (c) thereof, effective July 1, 1991. The former Code section was based on Ga. L. 1984, p. 976, § 1; Ga. L. 1986, p. 284, § 1; and Ga. L. 1990, p. 1396, § 1.

Cross references. — Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

36-36-30. "Municipal corporation" defined.

As used in this article, the term "municipal corporation" means a municipal corporation which has a population of 200 or more persons according to the United States decennial census of 1960 or any future such census. (Ga. L. 1966, p. 409, § 7; Code 1981, § 36-36-20; Code 1981, § 36-36-30, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Editor's notes. — Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-20 as present Code Section 36-36-30.

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 24, 25.

36-36-31. "Contiguous area" defined; determination of aggregate external boundary.

(a) As used in this article, the term "contiguous area" means any area of which at least one-eighth of the aggregate external boundary, at the time annexation procedures are initiated, directly abuts the municipal boundary. Any area shall also be a "contiguous area" if at least one-eighth of its aggregate external boundary would directly abut the municipal boundary if not otherwise separated, in whole or in part, from the municipal boundary by lands owned by the municipal corporation, by lands owned by a county, or by lands owned by this state or by the definite width of (1) any street or street right of way, (2) any creek

or river, or (3) any right of way of a railroad or other public service corporation.

(b) For purposes of determining an area's aggregate external boundary, all real property which, at the time annexation procedures are initiated, (1) is owned by the same person who owns real property in the area to be annexed, (2) adjoins to any extent such owner's real property in the area to be annexed, (3) is in the same county as the real property in the area to be annexed, and (4) is not included within the boundaries of any municipal corporation shall have its area included in determining the aggregate external boundary of the area to be annexed. (Ga. L. 1966, p. 409, § 5; Ga. L. 1971, p. 399, § 1; Ga. L. 1976, p. 1011, § 2; Code 1981, § 36-36-21; Code 1981, § 36-36-31, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Editor's notes. — Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-21 as present Code Section 36-36-31.

Law reviews. — For article discussing municipal annexation and the concept of contiguity, see 9 Ga. L. Rev. 167 (1974).

JUDICIAL DECISIONS

Contiguous property not found. — Parcel which the city attempted to annex and which was separated from the city boundary by three parcels: one owned by the county, one owned by the power company, and one over which the Georgia Department of Transportation had a right of way, was not a contiguous area since the power company property did not fall within any of the exceptions of O.C.G.A. § 36-36-31(a). Since the power company property was owned in fee simple by the power company, the power company had the ability to grant the property to another party at any time thereby potentially allowing the subject property to become an isolated municipal island precluding annexation of the subject parcel. City of Buford v. Gwinnett County, 262 Ga. App. 248, 585 S.E.2d 122 (2003).

Cited in City of Ft. Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

RESEARCH REFERENCES

ALR. — What land is contiguous or adjacent to municipality so as to be subject to annexation, 49 ALR3d 589.

36-36-32. Annexation upon application of owners of 60 percent of the land and 60 percent of the resident electors generally; application and signature requirements.

(a) Authority is granted to the governing bodies of the several municipal corporations of this state to annex to the existing corporate limits thereof unincorporated areas which are contiguous to the existing corporate limits at the time of such annexation, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed application of not less than 60 percent of the electors resident in the area included in any such application and of

the owners of not less than 60 percent of the land area, by acreage, included in such application. The authority granted in this Code section is in addition to existing authority and is intended to provide a cumulative method of annexing territory to municipal corporations in addition to those methods provided by present law.

(b) Each such application shall contain a complete description of the land proposed to be annexed. Lands to be annexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits.

(c) Each person signing an application for annexation shall also print or type thereon his name, address, and the date of signature. In addition, he shall indicate whether he is a landowner within the area to be annexed, an elector, or both.

(d) For the purpose of determining the percentage of electors signing such application, the municipal governing body shall obtain a list of electors residing in such area from the board of registrars of the county or counties in which the area lies. The list shall be compiled by the board of registrars and provided to the municipal governing body in accordance with Code Section 21-2-227. The municipal governing body shall bear the expense of the preparation of the list in the manner prescribed by such Code section.

(e) For the purpose of determining ownership of the property included within such application, the record titleholder of the fee simple title or his legal representative shall be considered the "owner" of the property.

(f) Signatures of owners of public roads and other public land within the area to be annexed shall not be required in satisfying the requirements of subsection (a) of this Code section and the acreage of such public properties shall be excluded from acreage calculations pertaining to the landowner approval required by subsection (a) of this Code section. This subsection applies only where the public properties are included in the area to be annexed.

(g) The necessary number of signatures of landowners and electors shall be obtained within one calendar year following the date of the first signature obtained. Failure to collect the required number within the one-year period shall invalidate previously collected signatures. Nothing in this subsection shall prohibit collection of signatures from the same persons on subsequent applications for annexation. (Ga. L. 1966, p. 409, § 1; Code 1981, § 36-36-22; Code 1981, § 36-36-32, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 1993, p. 91, § 36; Ga. L. 1994, p. 1443, § 27.)

Law reviews. — For article questioning the constitutionality of this section, see 10 Ga. L. Rev. 169 (1975). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

This section is not unconstitutional on the theory that the section attempts to delegate "legislative power," including the right to change municipal boundaries, to local governments. Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864 (1972) (see O.C.G.A. § 36-36-32).

Ga. L. 1966, p. 409, § 1 (see O.C.G.A. § 36-36-32) is a "general law" and provides a method of municipal annexation as contemplated by Ga. L. 1965, p. 298, § 2 (see O.C.G.A. § 36-35-2). Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864 (1972).

Best interest determinations. — Although finding that a city had not made a best interest determination as required by O.C.G.A. § 36-36-37(a), a trial court never held that the determination had to be made on the record; since the city's annexation evidence under O.C.G.A. § 36-36-35 was inadequate to assist the citizens in participating intelligently in the public hearing, the county was entitled to summary judgment under O.C.G.A. § 9-11-56. City of Riverdale v. Clayton County, 263 Ga. App. 672, 588 S.E.2d 845 (2003).

Comparison of 100 percent and 60 percent methods of annexation. — Requirements of the 100 percent method and the 60 percent method are different. In the 100 percent method, the land being annexed need only abut the municipal boundaries. In the 60 percent method, the land being annexed must coincide with the municipal boundaries on one-eighth of the municipality's aggregate external boundary. City of Marietta v. Cobb County Sch. Dist., 237 Ga. 518, 228 S.E.2d 894 (1976).

Involvement of only one landowner does not prohibit use of 60 percent method. — When the procedures that must be followed in using the "60 percent method" were followed by the city in effecting an annexation, the fact that there was only one landowner involved and no electors involved in this annexation did not prohibit use of the "60 percent method" prescribed by statute. Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864 (1972) (see O.C.G.A. § 36-36-32).

Removal of persons "resident in the area". — City had two options when the city found that 36 people were no longer "resident in the area." It could have challenged the names of the 36 people the city determined to be nonresidents and had the names removed from the list, or it could have sought others who were "resident in the area." City Council v. Richmond County, 259 Ga. 161, 377 S.E.2d 851 (1989).

When city discovered that 34 electors had moved and that two were no longer living in the area sought to be annexed, the city could not just subtract the 36 names that the city determined to be "nonresident in the area" from the total to arrive at the requisite 60 percent. City Council v. Richmond County, 259 Ga. 161, 377 S.E.2d 851 (1989).

Cited in Pharris v. Mayor of Jefferson, 226 Ga. 489, 175 S.E.2d 845 (1970); Pharris v. Mayor of Jefferson, 227 Ga. 32, 178 S.E.2d 863 (1970); City of Cartersville v. Bartow County Sch. Dist., 145 Ga. App. 129, 243 S.E.2d 293 (1978); City of Ft. Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Correctional institution site and adjoining property may be annexed by city in one procedure, upon application of appropriate persons, when property adjoining correctional institution abuts city limits. 1981 Op. Att'y Gen. No. 81-37.

Intent of General Assembly in referring to "the record title holder of the

fee simple title" was to give the grantor of a security deed the right to decide upon the question of annexation. Thus, in determining ownership of land for the purpose of determining the eligibility of a landowner to sign an application for annexation to a municipality, it should be done without regard to whether such land is encumbered by an outstanding deed to secure debt. 1967 Op. Att'y Gen. No. 67-16.

It is the apparent legislative scheme to place decision as to annexation upon persons residing in area, rather than upon persons holding mere security interests in the property. 1972 Op. Att'y Gen. No. U72-105.

Need for voice of property owner to be heard. — Legislature did not intend for any property to be annexed to a municipal corporation without the owner of the property at least being allowed a voice on the question of such annexation. Of course, if the county or State School Building Authority (now Georgia Education Authority (Schools)) or some other governmental entity chooses not to make application for annexation, but at least 60 percent of the other owners of property in the area making application for annexation do apply, the statutory requirements are met irrespective of the wishes of some owners. 1967 Op. Att'y Gen. No. 67-236.

Governing body of a municipality does not have authority to annex a lesser included portion of territory described in an original application. 1967 Op. Att'y Gen. No. 67-253.

Landowners may withdraw their consent to any annexation petition at any time through the date of the public hearing on such petition. If these withdrawals result in a reduction of the percentage of the land represented below 60 percent of the total area of land to be annexed, the petition is thereby invalidated, and the municipality into which the land was to be annexed has no authority to continue with the annexation. 1975 Op. Att'y Gen. No. U75-62.

Municipal governing body must request a list of electors registered in particular area making application for annexation. When preparing the list, the board of registrars should determine those electors within that area as of the date on which the application for annexation was presented by the electors and property owners to the municipal governing body. 1967 Op. Att'y Gen. No. 67-236.

Annexation of state park. — Municipality must have specific legislative approval to annex state park. 1968 Op. Att'y Gen. No. 68-211.

Acreage of railroad rights of way, county owned property, creeks and rivers, and other similar land must be included in calculation of total acreage for which application for annexation is made. 1967 Op. Att'y Gen. No. 67-236.

Department of Offender Rehabilitation (now Corrections) lacks authority to apply for or consent to annexation of state owned real property. 1981 Op. Att'y Gen. No. 81-37.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 38 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 60 et seq., 73, 74, 80.

ALR. — Power to extend boundaries of municipal corporations, 64 ALR 1335.

Power to detach land from municipal corporations, towns, or villages, 117 ALR 267.

Capacity to attack the fixing or extension of municipal limits or boundary, 13 ALR2d 1279; 17 ALR5th 195.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision, 17 ALR5th 195.

36-36-33. Annexation across county boundary lines prohibited.

There shall be no annexation across the boundary lines of any county under this article. (Ga. L. 1966, p. 409, § 5; Ga. L. 1971, p. 399, § 1; Ga.

L. 1976, p. 1011, § 2; Code 1981, § 36-36-23; Code 1981, § 36-36-33, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Editor's notes. — Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-23 as present Code Section 36-36-33.

JUDICIAL DECISIONS

Cited in City of Marietta v. Cobb County Sch. Dist., 237 Ga. 518, 228 S.E.2d 894 (1976).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 53 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 63 et seq.

36-36-34. Determination of compliance with article; notice upon noncompliance; proceedings upon compliance.

Whenever the governing body of a municipal corporation receives an application pursuant to Code Section 36-36-32, it shall, after investigation, determine whether such application complies with the requirements of this article. If it is determined that the application does not comply with this article, the governing body shall notify in writing the persons presenting the application, stating wherein the application is deficient. If it is determined that the application does comply with this article, the municipal governing body shall proceed to act on the application in accordance with Code Section 36-36-36. (Ga. L. 1966, p. 409, § 2; Code 1981, § 36-36-24; Code 1981, § 36-36-34, as redesignated by Ga. L. 1992, p. 2592, § 3.)

36-36-35. Plans and report for extension of services to area proposed to be annexed.

(a) A municipal corporation exercising authority under this article shall make plans for the extension of services to the area proposed to be annexed and, prior to the public hearing provided for in Code Section 36-36-36, shall prepare a report setting forth its plans to provide services to the area.

(b) The report required in subsection (a) of this Code section shall include:

(1) A map or maps of the municipality and adjacent territory, showing the present and proposed boundaries of the municipal corporation, the present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and

outfalls as required in paragraph (2) of subsection (c) of this Code section; and

(2) A statement setting forth the plans of the municipal corporation for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(c) The plans required in subsection (a) of this Code section shall:

(1) Provide for extending police protection, fire protection, garbage collection, and street maintenance services to the area to be annexed, on the date of annexation, on substantially the same basis and in the same manner as such services are provided within the rest of the municipal corporation prior to annexation; but if a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as water lines are made available in the area under existing municipal policies for the extension of water lines; and

(2) Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed within 12 months of the effective date of annexation, so that when such lines are constructed property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipal corporation for extending water and sewer lines to individual lots or subdivisions.

(d) The report required in subsection (a) of this Code section shall be prepared and made available to the public at least 14 days prior to the public hearing required by Code Section 36-36-36. (Ga. L. 1966, p. 409, § 6; Code 1981, § 36-36-25; Code 1981, § 36-36-35, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Law reviews. — For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

Adequacy of evidence. — Although finding that a city had not made a best interest determination as required by O.C.G.A. § 36-36-37(a), a trial court never held that the determination had to be made on the record; since the city's annexation evidence under O.C.G.A. § 36-36-35 was inadequate to assist the citizens in participating intelligently in the public hearing, the county was entitled to summary judgment under O.C.G.A. § 9-11-56. City of Riverdale v. Clayton County, 263 Ga. App. 672, 588 S.E.2d 845 (2003).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 87, 88.

ALR. — Liability of municipality for injury to lateral support in grading street, 44 ALR 1494.

Duty of public utility to duplicate service, 52 ALR 1111.

36-36-36. Requirement of public hearing; notice of time and place; persons entitled to be heard; right of property owner to withdraw consent.

(a) The municipal governing body shall hold a public hearing on any application which has been determined to meet the requirements of this article. The hearing shall be held not less than 15 nor more than 45 days from the time the governing body makes a determination that the petition is valid. Notice of the time and place of the hearing shall be given in writing to the persons presenting the application and shall be advertised once a week for two consecutive weeks immediately preceding the hearing in a newspaper of general circulation in the municipal corporation and in the area proposed for annexation.

(b) At the public hearing all persons resident or owning property in the municipal corporation or in the area proposed for annexation may be heard on the question of the annexation of the area by the municipal corporation.

(c) Any property owner or elector may withdraw his consent in writing postmarked or received within three business days after the public hearing required by this Code section. (Ga. L. 1966, p. 409, § 3; Code 1981, § 36-36-26; Code 1981, § 36-36-36, as redesignated by Ga. L. 1992, p. 2592, § 3.)

JUDICIAL DECISIONS

Subsection (c) of O.C.G.A. § 36-36-26 (now O.C.G.A. § 36-36-36) does not prohibit electors from changing their minds. City Council v. Richmond County, 259 Ga. 161, 377 S.E.2d 851 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Landowners may withdraw their consent to any annexation petition at any time through the date of public hearing on such petition. If these withdrawals result in a reduction of the percentage of the land represented below 60 percent of the total area of land to be annexed, the petition is thereby invalidated and the municipality into which the land was to be annexed has no authority to continue with the annexation. 1975 Op. Att'y Gen. No. U75-62.

Method of withdrawing signatures from petition. — Landowners wishing to withdraw their signatures from petitions requesting that a municipality annex a certain area may do so by timely notifying the governing authorities of the municipality in any manner reasonably calculated to inform those authorities of their

decision to do so. 1975 Op. Att'y Gen. No. U75-66.

RESEARCH REFERENCES

ALR. — Estoppel to question validity of proceedings extending boundaries of municipality, 101 ALR 581.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 ALR4th 822.

36-36-37. Adoption of annexing ordinance.

(a) If, after the public hearing, the governing body determines that the annexation to the municipal corporation of the area proposed in the application would be in the best interest of the residents and property owners of the area proposed for annexation and of the citizens of the municipal corporation, the area may be annexed to the municipal corporation by the adoption of an annexing ordinance.

(b) The annexing ordinance authorized by subsection (a) of this Code section shall be adopted within 60 days following validation of the signature of the applicants. (Ga. L. 1966, p. 409, § 4; Code 1981, § 36-36-27; Code 1981, § 36-36-37, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Law reviews. — For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

Cited in City of Riverdale v. Clayton County, 263 Ga. App. 672, 588 S.E.2d 845 (2003).

36-36-38. Filing of identification of annexed property with county and Department of Community Affairs; applicability of municipal ad valorem taxes to annexed territory; effect of annexation.

(a) When an application pursuant to Code Section 36-36-32 is acted upon by the municipal authorities and the land, by ordinance, is annexed to the municipal corporation, an identification of the annexed property shall be filed with the Department of Community Affairs and with the county in which the property is located in accordance with Code Section 36-36-3.

(b) Municipal ad valorem taxes shall not apply to property within the annexed territory until January 1 of the following year.

(c) When so annexed, such lands shall constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by local Act of the General Assembly. (Ga. L. 1966, p. 409, § 7; Code 1981, § 36-36-28; Code 1981, § 36-36-38, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 9.)

JUDICIAL DECISIONS

Cited in City Council v. Richmond County, 259 Ga. 161, 377 S.E.2d 851 (1989).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 85 et seq., 104 et seq.

36-36-39. Filing of petition for declaratory judgment to determine validity of annexation; judicial review.

(a) Within 30 days of the effective date of the ordinance annexing land to the municipal corporation, any resident elector of the area so annexed or of the municipal corporation or any property owner of such area or of the municipal corporation may bring a petition for declaratory judgment, in the superior court of the county of the legal situs of the annexing municipal corporation, to determine the validity, in accordance with this article, of the application and the municipal corporation's action thereon. Whenever such a petition is filed, the municipal governing body shall file with the court the record of their official actions in regard to such application and a certified copy of the annexing ordinance.

(b) The judgment of the court on any such petition may declare the annexation ordinance null and void upon a finding that the application and the municipal corporation's action thereon are not in substantial compliance with this article. Upon a finding that procedural defects or defects in the plan for service to the annexed area exist, the court, where possible, shall frame a judgment to perfect such defect and uphold the ordinance.

(c) Actions provided for in this Code section shall be in accordance with Chapter 4 of Title 9.

(d) Any aggrieved party may obtain a review of a final judgment under this Code section as is provided by law in other cases. (Ga. L. 1966, p. 409, § 9; Code 1981, § 36-36-29; Code 1981, § 36-36-39, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Editor's notes. — Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-29 as present Code Section 36-36-39.

JUDICIAL DECISIONS

Boards of education do not come within category of persons barred from attacking ordinances after 30 days. Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868 (1970); City of Marietta v. Cobb County Sch. Dist., 237 Ga. 518, 228 S.E.2d 894 (1976).

RESEARCH REFERENCES

C.J.S. — 26 C.J.S., Declaratory Judgments, §§ 99, 100.

ALR. — Proper remedy or procedure for attacking legality of proceedings annexing territory to municipal corporation, 18 ALR2d 1255.

36-36-40. Use of municipally owned utilities by residents of annexed territory.

Nothing within this article shall prohibit the municipal corporation from requiring the residents of the newly annexed area to use utilities owned by the municipal corporation when they are available. (Ga. L. 1966, p. 409, § 8; Code 1981, § 36-36-30; Code 1981, § 36-36-40, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Editor's notes. — Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-30 as present Code Section 36-36-40.

JUDICIAL DECISIONS

City may under proper authority annex territory under conditions applicable only to newly annexed territory. City of Midway v. Midway Nursing & Convalescent Ctr., Inc., 230 Ga. 77, 195 S.E.2d 452 (1973).

RESEARCH REFERENCES

ALR. — Duty of public utility to duplicate service, 52 ALR 1111.

ARTICLE 4

ANNEXATION PURSUANT TO RESOLUTION AND REFERENDUM

Cross references. — Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

36-36-50. Purpose of article.

It is declared to be the intention of the General Assembly in enacting this article to provide a method for annexing to municipal corporations

areas which meet the legislative standards established by Code Section 36-36-54. This article is not intended to affect or restrict the present authority of the General Assembly to legislate regarding the annexation of any area contiguous to any municipal corporation in this state, nor to limit in any way the authority of the General Assembly to provide alternative methods for extending municipal boundaries. This article shall not affect legislation pending on July 1, 1970. (Ga. L. 1970, p. 426, § 10; Code 1981, § 36-36-40; Code 1981, § 36-36-50, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 10 et seq. (see O.C.G.A. §§ 36-36-50 and 36-36-61 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

Authority to annex noncontiguous property. — Since the authority of the General Assembly to annex municipal property is limited only by the state and federal constitutions, the General Assembly's annexation of municipal property which was not contiguous to lands owned by a city was valid, and, therefore, the city's annexation of property which was contiguous to that property was also valid. City of Ft. Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Annexation by local act. — There is evidence of intent on part of General Assembly to retain authority to alter municipal boundaries through local acts. 1975 Op. Att'y Gen. No. U75-59.

36-36-51. Legislative declaration of policy.

It is declared to be the policy in this state:

(1) That municipal corporations are created for the purpose of providing local governmental services and for ensuring the health, safety, and welfare of persons and the protection of property in areas being used primarily for residential, commercial, industrial, and institutional purposes;

(2) That the orderly growth of municipal corporations, based on the need for municipal services and the ability of the municipal corporation to serve, is essential to the economic progress of the state and to the well-being of its urban citizens;

(3) That the extension of municipal boundaries to accomplish orderly growth should be in accordance with standards established by the General Assembly; and

(4) That any areas included within municipal boundaries under this article should receive all services provided by the annexing municipal corporation as soon as possible after coming within its boundaries. (Ga. L. 1970, p. 426, § 1; Ga. L. 1971, p. 398, § 1; Code 1981, § 36-36-41; Code 1981, § 36-36-51, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Editor's notes. — Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-41 as present Code Section 36-36-51.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 1, 31 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 57.

36-36-52. Definitions.

As used in this article, the term:

(1) "Contiguous area" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the municipal corporation or some other political subdivision, or lands owned by this state.

(2) "Used for residential purposes" refers to any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (Ga. L. 1970, p. 426, § 8; Code 1981, § 36-36-42; Code 1981, § 36-36-52, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Editor's notes. — Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-42 as present Code Section 36-36-52.

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

Cited in City of Ft. Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 53 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 63 et seq.

36-36-53. Authorization of annexation generally.

The governing body of any municipal corporation may extend the corporate limits of the municipal corporation to include any area which meets the standards of Code Section 36-36-56, under the conditions and procedure provided in this article and in accordance with the procedures provided in Article 1 of this chapter. (Ga. L. 1970, p. 426, § 2; Ga. L. 1971, p. 398, § 2; Code 1981, § 36-36-43; Code 1981, § 36-36-53, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Law reviews. — For article suggesting that Ga. L. 1970, p. 426 (see O.C.G.A. § 36-36-40 et seq.) is not a satisfactory vehicle for urban annexation, see 10 Ga. L. Rev. 169 (1975).

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 35 et seq., 40, 44, 62.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 57, 59.

ALR. — Facts warranting extension or reduction of municipal boundaries, 62 ALR 1011.

Power to extend boundaries of municipal corporations, 64 ALR 1335.

Capacity to attack the fixing or extension of municipal limits or boundary, 13 ALR2d 1279; 17 ALR5th 195.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision, 17 ALR5th 195.

36-36-54. Standards and requirements for area proposed to be annexed.

(a) A municipal governing body may extend the municipal corporate limits to include any area:

(1) Which meets the general standards of subsection (b) of this Code section; and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d) of this Code section.

(b) The total area to be annexed must meet the following standards on the date of the adoption of the resolution:

(1) It must be adjacent or contiguous to the municipal corporation's boundaries at the time the annexation proceeding is begun;

(2) At least one-eighth of the aggregate external boundaries of the area must coincide with the municipal boundary;

(3) No part of the area shall be included within the boundary of another municipal corporation or county; and

(4) No part of the area shall, at the time notice of public hearing is given in accordance with Code Section 36-36-57, be receiving either water service or sewer service, or both, and also either police protection or fire protection from any unit of government other than the municipal corporation proposing annexation. This requirement may be waived by written agreement of the municipal corporation proposing annexation and of the other unit of government affected. Where a waiver of this requirement is applicable, a copy of the agreement shall be made a part of the report required by Code Section 36-36-56. Where contracts exist between counties and municipal corporations, both government entities must agree by mutual consent prior to annexation.

(c) Except as provided in subsection (d) of this Code section, the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which, on the date of the adoption of the annexation resolution, has a total resident population equal to at least two persons for each acre of land included within its boundaries and is subdivided into lots and tracts such that at least 60 percent of the total acreage consists of lots and tracts five acres or less in size and such that at least 60 percent of the total number of lots and tracts are one acre or less in size.

(d) In addition to areas developed for urban purposes, a governing body may include in the area to be annexed any area which does not meet the requirements of subsection (c) of this Code section if such area lies between the municipal boundary and an area developed for urban purposes such that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipal corporation without extending services and water and sewer lines through the sparsely developed area and, if such area is adjacent, on at least 60 percent of its external boundary to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c) of this Code section.

(e) In fixing new municipal boundaries, a municipal governing body shall, wherever practical, use natural topographic features, such as ridge lines, streams, and creeks, as boundaries. If a street is used as a boundary, the governing body shall, wherever practical, include within the municipal corporation land on both sides of the street; such outside boundary may not extend more than 200 feet beyond the right of way of the street, except to include all of a lot or parcel of land partially within 200 feet of the right of way. (Ga. L. 1970, p. 426, § 4; Code 1981, § 36-36-44; Code 1981, § 36-36-54, as redesignated by Ga. L. 1992, p. 2592, § 3.)

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

Amount of land annexed. — Removal of a small portion of the land to be annexed to a city did not void the county's approval with respect to the remaining land. H-B Properties, Ltd. v. City of Roswell, 247 Ga. App. 851, 545 S.E.2d 37 (2001).

Boundaries of annexed area. — Annexed territory need conform to suggested boundaries only "whenever practical," which indicates that such limitations on the establishment of boundaries are more directory than mandatory; thus, the fact that the boundaries of an annexed area did not correspond to natural topographic features and that a portion of the annexed area bounded by two roads did not encompass both sides of the street did not violate the statute as the annexation boundaries were based on voting precincts, which satisfied practical concerns with regard to identifying persons eligible to vote in the referendum and also a desire to annex land by neighborhoods. H-B Properties, Ltd. v. City of Roswell, 247 Ga. App. 851, 545 S.E.2d 37 (2001).

Cited in City of Ft. Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 49 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 63 et seq.

ALR. — What land is contiguous or adjacent to municipality so as to be subject to annexation, 49 ALR3d 589.

36-36-55. Determination of compliance with standards and requirements; review of determination by superior court.

In determining population and degree of land subdivision for purposes of meeting the requirements of Code Section 36-36-54, the municipal corporation shall use methods calculated to provide reasonably accurate results. In determining, on appeal to the superior court,

whether the standards set forth in Code Section 36-36-54 have been met, the reviewing court shall accept the estimates of the municipal corporation:

(1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in the area or in the county or counties of which the area is a part, as determined by the last preceding federal census or based on a new enumeration carried out under reasonable rules and regulations by the annexing municipal corporation, provided that the court shall not accept such estimates if the petitioner on appeal demonstrates that the estimates are in error in the amount of 10 percent or more;

(2) As to total area, if the estimate is based on an actual survey, on county tax maps or records, on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioner on appeal demonstrates that the estimates are in error in the amount of 5 percent or more; and

(3) As to degree of land subdivision, if the estimates are based on an actual survey, on county tax maps or records, on aerial photographs, or on some other reasonably reliable source, unless the petitioner on appeal shows that the estimates are in error in the amount of 5 percent or more. (Ga. L. 1970, p. 426, § 9; Code 1981, § 36-36-45; Code 1981, § 36-36-55, as redesignated by Ga. L. 1992, p. 2592, § 3.)

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

36-36-56. Plans and report for extension of services to area proposed to be annexed.

(a) A municipal corporation exercising authority under this article shall make plans for the extension of services to the area proposed to be annexed and, prior to the public hearing provided for in Code Section 36-36-57, shall prepare a report setting forth its plans to provide services to such area.

(b) The report required in subsection (a) of this Code section shall include:

(1) A map or maps of the municipal corporation and adjacent territory, showing the present and proposed boundaries of the mu-

nicipal corporation, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls as required in paragraph (3) of this subsection, and the general land use pattern in the area to be annexed;

(2) A statement showing that the area to be annexed meets the requirements of Code Section 36-36-54; and

(3) A statement setting forth the plans of the municipal corporation for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(c) The plans required in subsection (a) of this Code section shall:

(1) Provide for extending police protection, fire protection, garbage collection, and street maintenance services to the area to be annexed, on the date of annexation, on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. If a water distribution system is not available in the area to be annexed, the plans must call for reasonable, effective fire protection services until such time as water lines are made available in such area under existing municipal policies for the extension of water lines;

(2) Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions;

(3) If extension of major trunk water mains and sewer outfall lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such mains and outfalls as soon as possible following the effective date of annexation. In any event, the plans shall call for contracts to be let and construction to begin within 18 months following the effective date of annexation; and

(4) Set forth the methods under which the municipal corporation plans to finance extension of services into the area to be annexed. (Ga. L. 1970, p. 426, § 3; Code 1981, § 36-36-46; Code 1981, § 36-36-56, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "subsection" was substituted for "Code section" in paragraph (b)(1).

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an

alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

RESEARCH REFERENCES

C.J.S. — 28 C.J.S., Drains, § 16 et seq. 62 C.J.S., Municipal Corporations, §§ 63 et seq., 76.

36-36-57. Adoption of annexation resolution by municipal corporation; contents of resolutions; approval, availability, and distribution of report relating to extension of services; conduct of public hearing.

(a) Any municipal governing body desiring to annex territory pursuant to this article shall first pass a resolution stating the intent of the municipal corporation to consider annexation. The resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation. The date for the public hearing shall be not less than 30 days and not more than 60 days following passage of the resolution. The notice of the public hearing shall (1) fix the date, hour, and place of a public hearing, (2) describe clearly the boundaries of the area under consideration, and (3) state that the report required in Code Section 36-36-56 will be available at the office of the municipal clerk at least 14 days prior to the date of the public hearing. The notice shall be given by publication in a newspaper having general circulation in the municipality once a week for three successive weeks prior to the date of the hearing. The date of the last publication shall be not more than seven days preceding the date of public hearing. If there is no such newspaper, the municipal corporation shall post the notice in at least three public places within the municipality and in at least three public places in the area to be annexed for 30 days prior to the date of the public hearing.

(b) At least 14 days before the date of the public hearing, the governing body shall approve the report provided for in Code Section 36-36-56 and shall make it available to the public at the office of the municipal clerk. In addition, the municipal corporation may prepare a summary of the full report for public distribution.

(c) At the public hearing, a representative of the municipal corporation shall first make an explanation of the report required in Code Section 36-36-56. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard. (Ga. L. 1970, p. 426, § 5; Code 1981, § 36-36-47; Code 1981, § 36-36-57, as redesignated by Ga. L. 1992, p. 2592, § 3.)

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

Area to be annexed as set forth in initial resolution. — Use of "under consideration" in the statute weighs against a finding that the statute requires that the area to be annexed must be set forth in finality when an initial resolution is passed. H-B Properties, Ltd. v. City of Roswell, 247 Ga. App. 851, 545 S.E.2d 37 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 58 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 73 et seq.

ALR. — Estoppel to question validity of proceedings extending boundaries of municipality, 101 ALR 581.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 ALR4th 822.

36-36-58. Referendum for ratification or rejection of annexation resolution generally; procedure; subsequent annexation attempt.

The municipal corporation shall issue a call for a referendum to ratify or reject the adoption of the annexation resolution. The referendum shall be held not less than 30 days nor more than 60 days after the date of the public hearing required by Code Section 36-36-57. The referendum shall be held, insofar as possible, under the procedures set forth in Chapter 2 of Title 21 for special elections. Only those persons registered to vote for members of the General Assembly residing, on the date of the adoption of the resolution, in the proposed area to be annexed shall vote in the referendum. If a majority of those voting vote in favor of annexation, the area shall become a part of the corporate limits of the municipality, but not otherwise. If a majority of those voting vote against the annexation, a period of two years must elapse before annexation of the same area or any portion thereof may be attempted again under authority of this article. (Ga. L. 1970, p. 426, § 12; Code 1981, § 36-36-48; Code 1981, § 36-36-58, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 1998, p. 295, § 3.)

Cross references. — Elections, T. 21, C. 2.

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 82 et seq. 82 C.J.S., Statutes, §§ 142, 143, 159.

36-36-59. Filing of identification of annexed territory with Department of Community Affairs and county governing authority.

Whenever the limits of a municipal corporation are enlarged in accordance with this article, it shall be the duty of the clerk, city attorney, or other person designated by the governing authority of the municipal corporation to cause an identification of the annexed territory to be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3. (Ga. L. 1970, p. 426, § 6; Code 1981, § 36-36-49; Code 1981, § 36-36-59, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "is" was deleted following "territory".

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 104 et seq.

36-36-60. Authorized expenditures relating to annexation.

Any municipal corporation initiating annexations under this article is authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and annexation of unincorporated territory adjacent to the municipal corporation. In addition, following final passage of the annexation ordinance, the annexing municipal corporation shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in an effective and expeditious manner prior to the effective date of annexation. (Ga. L. 1970, p. 426, § 7; Code 1981, § 36-36-50; Code 1981, § 36-36-60, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Editor's notes. — Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-50 as present Code Section 36-36-60.

JUDICIAL DECISIONS

Authority to pass local acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 104 et seq.

36-36-61. Restriction on applicability of article.

This article shall not apply to any territory which has been a part of a municipal corporation for three years immediately preceding July 1, 1970, and which has been or is in the process of being deannexed from the corporate limits of any such municipal corporation. (Ga. L. 1970, p. 426, § 11; Code 1981, § 36-36-51; Code 1981, § 36-36-61, as redesignated by Ga. L. 1992, p. 2592, § 3.)

Editor's notes. — Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-51 as present Code Section 36-36-61.

JUDICIAL DECISIONS

Authority to pass local acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local acts annexing territory to municipal corporations. These sections provide an

alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, appeal dismissed, 429 U.S. 909, 97 S. Ct. 298, 50 L. Ed. 2d 276 (1976).

ARTICLE 5

LIMITATION ON ANNEXATION OF AREAS FURNISHED SERVICES OR INCLUDED IN COMPREHENSIVE ZONING PLAN BY CERTAIN COUNTIES

Cross references. — Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

36-36-70. Approval by governing authority in certain counties for annexation of areas furnished services or included in comprehensive zoning plan; right of property owners to file action for injunction.

Reserved. Repealed by Ga. L. 2004, p. 398, § 1, effective May 13, 2004.

Editor's notes. — This Code section was based on Ga. L. 1971, p. 4112, §§ 1, 2; Ga. L. 1980, p. 4357, § 1; Ga. L. 1981, p. 4237, § 1; Code 1981, § 36-36-70, enacted by Ga. L. 1982, p. 2107, § 39; Ga. L. 1989, p. 153, § 1; Ga. L. 1992, p. 2592, § 3; Ga. L. 2002, p. 1473, § 1.

ARTICLE 6

ANNEXATION OF UNINCORPORATED ISLANDS

Cross references. — Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

JUDICIAL DECISIONS

Unincorporated areas divided by railroad right-of-way. — When there was no evidence that railroad right-of-way dividing two large unincorporated areas had been annexed to the city by a local statute of the General Assembly or under applicable general statutes, it was an unincorporated strip of land and the two unincorporated areas it traversed formed an unincorporated area in excess of fifty acres which the city could not lawfully annex by an ordinance passed under O.C.G.A. Art. 6, Ch. 36, T. 36. Culpepper v. City of Cordele, 212 Ga. App. 890, 443 S.E.2d 642 (1994).

36-36-90. Definitions.

As used in this article, the term:

(1) "Contiguous area" means any unincorporated area which, on or after January 1, 1999, had an aggregate external boundary directly abutting a municipal boundary. Any area shall be considered "contig-

uous" if the aggregate external boundary would directly abut the municipal boundary if not otherwise separated, in whole or in part, from the municipal boundary by lands owned by the municipal corporation, by lands owned by a county, or by lands owned by this state or by the definite width of:

(A) Any street or street right of way;

(B) Any creek or river; or

(C) Any right of way of a railroad or other public service corporation.

(2) "Municipal corporation" means a municipal corporation which has a population of 200 or more persons according to the United States decennial census of 1980 or any future such census.

(3) "Unincorporated island" means:

(A) An unincorporated area in existence on January 1, 1991, with its aggregate external boundaries abutting the annexing municipality;

(B) An unincorporated area in existence as of January 1, 1991, with its aggregate external boundaries abutting any combination of the annexing municipality and one or more other municipalities; or

(C) An unincorporated area in existence as of January 1, 1991, which the county governing authority has by resolution adopted not later than 90 days following July 1, 1992, that identifies any unincorporated area of the county to which the county has no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county. (Code 1981, § 36-36-90, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 11.)

JUDICIAL DECISIONS

Cited in City of Ft. Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

36-36-91. Area included in determining aggregate external boundary.

For the purposes of determining the aggregate external boundary of an unincorporated area, all real property in the area to be annexed, which at the time the annexation procedures are initiated, (1) is unincorporated, and (2) is in the same county as the annexing municipal corporation, shall have its area included in determining the

aggregate external boundary. (Code 1981, § 36-36-91, enacted by Ga. L. 1992, p. 2592, § 3.)

36-36-92. Annexation of unincorporated islands; procedures; provision of municipal services; preclearance by U.S. Justice Department.

(a) The governing body of each municipal corporation of the state may annex to the existing corporate limits thereof all or any portion of unincorporated islands which are contiguous to the existing limits at the time of such annexation upon compliance with the procedures set forth in this article and in accordance with the procedures provided in Article 1 of this chapter.

(b) Annexation of unincorporated islands as authorized in subsection (a) of this Code section shall be accomplished by ordinance at a regular meeting of the municipal governing authority within 30 days after written notice of intent to annex such property is mailed to the owner of such property at the last known address for such owner as it appears on the ad valorem tax records of the county in which such property is located. After the adoption of the annexation ordinance, an identification of the property annexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located, in accordance with Code Section 36-36-3.

(c) Annexation of an unincorporated island as authorized by subsection (a) of this Code section, which unincorporated island directly abuts more than one municipality, shall be by the municipality which abuts the unincorporated island along the greatest percentage of its external boundary as provided in this Code section, unless otherwise agreed to by the affected municipalities.

(d) Annexations under this article shall be at the sole discretion of the governing body of each municipality.

(e) Municipal services to the annexed area shall be provided on substantially the same basis and in the same manner as such services are provided within the rest of the municipal corporation; provided, however, the extension of water and sewer services shall be according to the policies in effect in such municipal corporation for extending water and sewer lines to individual lots and subdivisions.

(f) The provisions of this article with regard to annexation of unincorporated islands is severable as to each city and to the annexation of each unincorporated island therein. The implementation of each annexation pursuant to this article is contingent upon preclearance of each annexation by the U.S. Justice Department pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973(c). Any city annexing an

unincorporated island pursuant to this article shall submit such annexation to the U.S. Justice Department for preclearance not later than 90 days following the date of adoption of the annexation ordinance by the municipal governing authority. (Code 1981, § 36-36-92, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 1995, p. 840, § 1; Ga. L. 2000, p. 164, § 12.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "city" was substituted for "City" in the first sentence of subsection (f).

Law reviews. — For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005). For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005).

JUDICIAL DECISIONS

Notice. — Owners of property annexed by a city did not show, under O.C.G.A. § 36-36-92(b), that the owners did not receive proper notice of the public meeting at which the annexation ordinance was adopted because the statute required that annexation occur no later than 30 days after notice was mailed to the owners, rather than no less than 30 days, as the owners argued, and the owners clearly received notice of the annexation within the required 30-day period. Bradley Plywood Corp. v. Mayor & Aldermen of Savannah, 271 Ga. App. 828, 611 S.E.2d 105 (2005).

City complied with O.C.G.A. § 36-36-92(b) by adopting the city's annexation ordinances within 30 days of the city's formal notice of annexation. Earlier notices stating the formal notice of annexation required by § 36-36-92(b) would follow at a later date were nothing more than "courtesy" notices that did not trigger the running of the 30 days time-limit, and, as such, did not invalidate the annexation ordinances that were adopted within 30 days of the later formal notice. Calloway v. City of Fayetteville, 296 Ga. App. 200, 674 S.E.2d 66 (2009).

Annexation held proper. — By annexing a portion of a larger unincorporated area that was already qualified as an "unincorporated island," a city did not "create" a newly-formed unincorporated island in violation of O.C.G.A. § 36-36-4(a)(1), but rather simply reduced the size of a previously-existing island. Calloway v. City of Fayetteville, 296 Ga. App. 200, 674 S.E.2d 66 (2009).

Cited in City of Ft. Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

ARTICLE 7

PROCEDURE FOR RESOLVING ANNEXATION DISPUTES

36-36-110. Applicability.

The procedures of this article shall apply to all annexations pursuant to this chapter but shall not apply to annexations by local Acts of the General Assembly. (Code 1981, § 36-36-110, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-111. Notice of annexation.

Upon receipt of a petition of annexation, a municipal corporation shall notify the governing authority of the county in which the territory to be annexed is located by certified mail or by statutory overnight delivery. Such notice shall include a copy of the annexation petition which shall include the proposed zoning and land use for such area. The municipal corporation shall take no final action on such annexation except as otherwise provided in this article. (Code 1981, § 36-36-111, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-112. Prohibition on a change in zoning or land use.

If no objection is received as provided in Code Section 36-36-113, the annexation may proceed as otherwise provided by law; provided, however, that as a condition of the annexation the municipal corporation shall not change the zoning or land use plan relating to the annexed property to a more intense density than that stated in the notice provided for in Code Section 36-36-111 for one year after the effective date of the annexation unless such change is made in the service delivery agreement or comprehensive plan and is adopted by the affected city and county and all required parties. (Code 1981, § 36-36-112, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-113. Objection to annexation; grounds and procedures.

(a) The county governing authority may by majority vote object to the annexation because of a material increase in burden upon the county directly related to any one or more of the following:

(1) The proposed change in zoning or land use;

(2) Proposed increase in density; and

(3) Infrastructure demands related to the proposed change in zoning or land use.

(b) Delivery of services may not be a basis for a valid objection but may be used in support of a valid objection if directly related to one or more of the subjects enumerated in paragraphs (1), (2), and (3) of subsection (a) of this Code section.

(c) The objection provided for in subsection (a) of this Code section shall document the nature of the objection specifically providing evidence of any financial impact forming the basis of the objection and shall be delivered to the municipal governing authority by certified mail or statutory overnight delivery to be received not later than the end of the thirtieth calendar day following receipt of the notice provided for in Code Section 36-36-111.

(d) In order for an objection pursuant to this Code section to be valid, the proposed change in zoning or land use must:

(1) Result in:

(A) A substantial change in the intensity of the allowable use of the property or a change to a significantly different allowable use; or

(B) A use which significantly increases the net cost of infrastructure or significantly diminishes the value or useful life of a capital outlay project, as such term is defined in Code Section 48-8-110, which is furnished by the county to the area to be annexed; and

(2) Differ substantially from the existing uses suggested for the property by the county's comprehensive land use plan or permitted for the property pursuant to the county's zoning ordinance or its land use ordinances. (Code 1981, § 36-36-113, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-114. Arbitration panel; composition and membership.

(a) Not later than the fifteenth calendar day following the date the municipal corporation received the first objection provided for in Code Section 36-36-113, an arbitration panel shall be appointed as provided in this Code section.

(b) The arbitration panel shall be composed of five members to be selected as provided in this subsection. The Department of Community Affairs shall develop three pools of arbitrators, one pool which consists of persons who are currently or within the previous six years have been municipal elected officials, one pool which consists of persons who are currently or within the previous six years have been county elected officials, and one pool which consists of persons with a master's degree or higher in public administration or planning and who are currently employed by an institution of higher learning in this state, other than the Carl Vinson Institute of Government. The pool shall be sufficiently large to ensure as nearly as practicable that no person shall be required to serve on more than two panels in any one calendar year and serve on no more than one panel in any given county in any one calendar year. The department is authorized to coordinate with the Georgia Municipal Association, the Association County Commissioners of Georgia, the Council of Local Governments, and similar organizations in developing and maintaining such pools.

(c) Upon receiving notice of a disputed annexation, the department shall choose at random four names from the pool of municipal officials, four names from the pool of county officials, and three names from the pool of academics; provided, however, that none of such selections shall

include a person who is a resident of the county which has interposed the objection or any municipal corporation located wholly or partially in such county. The municipal corporation shall be permitted to strike or excuse two of the names chosen from the county officials pool; the county shall be permitted to strike or excuse two of the names chosen from the municipal officials pool; and the county and municipal corporation shall each be permitted to strike or excuse one of the names chosen from the academic pool.

(d) Prior to being eligible to serve on any of the three pools, persons interested in serving on such panels shall receive joint training in alternative dispute resolution together with zoning and land use training, which may be designed and overseen by the Carl Vinson Institute of Government in conjunction with the Association County Commissioners of Georgia and the Georgia Municipal Association, provided such training is available.

(e) At the time any person is selected to serve on a panel for any particular annexation dispute, he or she shall sign the following oath: "I do solemnly swear or affirm that I will faithfully perform my duties as an arbitrator in a fair and impartial manner without favor or affection to any party, and that I have not and will not have any ex parte communication regarding the facts and circumstances of the matters to be determined, other than communications with my fellow arbitrators, and will only consider, in making my determination, those matters which may lawfully come before me." (Code 1981, § 36-36-114, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

36-36-115. Meetings of arbitration panel; duties; findings and recommendations; compensation.

(a)(1) The arbitration panel appointed pursuant to Code Section 36-36-114 shall meet as soon after appointment as practicable and shall receive evidence and argument from the municipal corporation, the county, and the applicant or property owner and shall by majority vote render a decision which shall be binding on all parties to the dispute as provided for in this article not later than the sixtieth day following such appointment. The meetings of the panel in which evidence is submitted or arguments of the parties are made shall be open to the public pursuant to Chapter 14 of Title 50. The panel shall first determine the validity of the grounds for objection as specified in the objection. If an objection involves the financial impact on the county as a result of a change in zoning or land use or the provision of maintenance of infrastructure, the panel shall quantify such impact in terms of cost. As to any objection which the panel has

determined to be valid, the panel, in its findings, may establish reasonable zoning, land use, or density conditions applicable to the annexation and propose any reasonable mitigating measures as to an objection pertaining to infrastructure demands.

(2) In arriving at its determination, the panel shall consider:

(A) The existing comprehensive land use plans of both the county and city;

(B) The existing land use patterns in the area of the subject property;

(C) The existing zoning patterns in the area of the subject property;

(D) Each jurisdiction's provision of infrastructure to the area of the subject property;

(E) Whether the county has approved similar changes in intensity or allowable uses on similar developments in other unincorporated areas of the county;

(F) Whether the county has approved similar developments in other unincorporated areas of the county which have a similar impact on infrastructure as complained of by the county in its objection; and

(G) Whether the infrastructure or capital outlay project which is claimed adversely impacted by the county in its objection was funded by a county-wide tax.

(3) The county shall provide supporting evidence that its objection is consistent with its land use plan and the pattern of existing land uses and zonings in the area of the subject property.

(4) The county shall bear at least 75 percent of the cost of the arbitration. The panel shall apportion the remaining 25 percent of the cost of the arbitration equitably between the city and the county as the facts of the appeal warrant; provided, however, that if the panel determines that any party has advanced a position that is substantially frivolous, the costs shall be borne by the party that has advanced such position.

(5) The reasonable costs of participation in the arbitration process of the property owner or owners whose property is at issue shall be borne by the county and the city in the same proportion as costs are apportioned under paragraph (4) of this subsection.

(6) The panel shall deliver its findings and recommendations to the parties by certified mail or statutory overnight delivery.

(b) If the decision of the panel contains zoning, land use, or density conditions, the findings and recommendations of the panel shall be recorded in the deed records of the county with a caption describing the name of the current owner of the property, recording reference of the current owner's acquisition deed and a general description of the property, and plainly showing the expiration date of any restrictions or conditions.

(c) The arbitration panel shall be dissolved on the tenth day after it renders its findings and recommendations but may be reconvened as provided in Code Section 36-36-116.

(d) The members of the arbitration panel shall receive the same per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(e) If the panel so agrees, any one or more additional annexation disputes which may arise between the parties prior to the panel's initial meeting may be consolidated for the purpose of judicial economy if there are similar issues of location or similar objections raised to such other annexations or the property to be annexed in such other annexations is within 2,500 feet of the subject property. (Code 1981, § 36-36-115, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-116. Appeal.

The municipal or county governing authority or an applicant for annexation may appeal the decision of the arbitration panel by filing an action in the superior court of the county within ten calendar days from receipt of the panel's findings and recommendations. The sole grounds for appeal shall be to correct errors of fact or of law, the bias or misconduct of an arbitrator, or the panel's abuse of discretion. The superior court shall schedule an expedited appeal and shall render a decision within 20 days from the date of filing. If the court finds that an error of fact or law has been made, that an arbitrator was biased or engaged in misconduct, or that the panel has abused its discretion, the court shall issue such orders governing the proposed annexation as the circumstances may require, including remand to the panel. Any unappealed order shall be binding upon the parties. The appeal shall be assigned to a judge who is not a judge in the circuit in which the county is located. (Code 1981, § 36-36-116, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

36-36-117. Annexation after conclusion of procedures; remedies for violations of conditions.

If the annexation is completed after final resolution of any objection, whether by agreement of the parties, act of the panel, or court order as a result of an appeal, the municipal corporation shall not change the zoning, land use, or density of the annexed property for a period of one year unless such change is made in the service delivery agreement or comprehensive plan and adopted by the affected city and county and all required parties. Following the conclusion of the dispute resolution process outlined in this article, the municipal corporation and an applicant for annexation may either accept the recommendations of the arbitration panel and proceed with the remaining annexation process or abandon the annexation proceeding. A violation of the conditions set forth in this Code section may be enforced thereafter at law or in equity until such conditions have expired as provided in this Code section. (Code 1981, § 36-36-117, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-118. Abandonment of proposed annexation; remedies for violations of conditions.

If at any time during the proceedings the municipal corporation or applicant abandons the proposed annexation, the county shall not change the zoning, land use, or density affecting the property for a period of one year unless such change is made in the service delivery agreement or comprehensive plan and adopted by the affected city and county and all required parties. A violation of the conditions set forth in this Code section may be enforced thereafter at law or in equity until such period has expired. After final resolution of any objection, whether by agreement of the parties, act of the panel, or any appeal from the panel's decision, the terms of such decision shall remain valid for the one-year period and such annexation may proceed at any time during the one year without any further action or without any further right of objection by the county. (Code 1981, § 36-36-118, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

36-36-119. Good faith negotiations; written agreement governing terms of annexation.

The county, the municipal governing authorities, and the property owner or owners shall negotiate in good faith throughout the annexation proceedings provided by this article and may at any time enter into a written agreement governing the annexation. If such agreement is reached after the arbitration panel has been appointed and before its dissolution, such agreement shall be adopted by the panel as its findings and recommendations. If such agreement is reached after an

appeal is filed in the superior court and before the court issues an order, such agreement shall be made a part of the court's order. Any agreement reached as provided in this Code section shall be recorded as provided in Code Section 36-36-115. (Code 1981, § 36-36-119, enacted by Ga. L. 2007, p. 292, § 2/HB 2.)

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

CHAPTER 37

ACQUISITION AND DISPOSITION OF REAL AND PERSONAL PROPERTY GENERALLY

Sec.
36-37-1. Devises, gifts, and grants of property for parks or other public purposes.
36-37-2. Acceptance of donations or gifts of property generally.
36-37-3. Municipal corporations as trustees for donated or gifted property generally.
36-37-4. Receipt of cemetery or burial lots in trust; annual returns; commissions.
36-37-5. Municipal corporation as trustee of funds donated to cemetery.
36-37-6. Disposition of municipal property generally.
36-37-6.1. Sale, exchange, lease, or grant of easement over property used for recreational purposes by incorporated municipalities having population greater than 300,000.
Sec.
36-37-6.2. Purchase or other acquisition of real property on time or partly for cash; securing of balance; limitation on liability.
36-37-7. Disposition of public utility plants or properties — Power generally; effect of charter restrictions.
36-37-8. Disposition of public utility plants or properties — Notice of intent to dispose; petition objecting to disposition; election and notice.
36-37-9. Disposition of public utility plants or properties — Ballots for election.
36-37-10. Disposition of public utility plants or properties — Proposed disposition determined by two-thirds vote.

Cross references. — Disposition of property no longer needed for public road purposes, T. 32, C. 7.

36-37-1. Devises, gifts, and grants of property for parks or other public purposes.

(a) By appropriate conveyance, any person may devise, give, or grant to any municipal corporation of this state, in fee simple or in trust, or to other persons as trustees, lands dedicated by such conveyance in perpetuity to the public use as a park, pleasure ground, or for other public purpose. By such conveyance, any person may also devise, give, or grant in perpetuity to such corporations or persons other property, real or personal, for the development, improvement, and maintenance of such property.

(b) Any municipal corporation or other persons, natural or artificial, as trustees, to whom such devise, gift, or grant is made may accept the same in behalf of and for the benefit of the public. The municipal corporation or trustees shall have the right to improve, embellish, and

ornament the land so granted as a public park or for other public use. Every municipal corporation to which such conveyance is made shall have the power, by appropriate police provision, to protect the public in the use and enjoyment thereof. (Ga. L. 1905, p. 117, §§ 1, 2; Civil Code 1910, §§ 890, 891; Code 1933, §§ 69-504, 69-505.)

Cross references. — Further provisions regarding gifts of property or money to counties and municipalities for playground or recreation purposes, § 36-64-6.

Law reviews. — For comment on Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966), see 2 Ga. St. B.J. 487 (1966). For comment on Evans v. Abney, 396 U.S. 435, 90 S. Ct. 628, 24 L. Ed. 2d 634 (1970), as to reversion of a charitable trust designed to operate on a segregated basis rather than application of cy pres, see 22 Mercer L. Rev. 493 (1971).

JUDICIAL DECISIONS

Public character of a park requires that the park be treated as a public institution subject to the command of U.S. Const., amend. 14. Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966). For comment, see 2 Ga. St. B.J. 487 (1966).

When the testator's intent to create racially segregated city park could not legally be carried out, application of cy pres doctrine reverting land to heirs was not unconstitutional. Evans v. Abney, 396 U.S. 435, 90 S. Ct. 628, 24 L. Ed. 2d 634 (1970). For comment, see 22 Mercer L. Rev. 493 (1971).

Cited in Evans v. Abney, 224 Ga. 826, 165 S.E.2d 160 (1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 470 et seq. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, §§ 6, 7.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 1143, 1146, 1150.

ALR. — Power of municipal corporation or other political body to accept and administer trust, 10 ALR 1368.

Validity and effect of gift for charitable purposes which excludes otherwise qualified beneficiaries because of their race or religion, 25 ALR3d 736.

Construction of highway through park as violation of use to which park property may be devoted, 60 ALR3d 581.

36-37-2. Acceptance of donations or gifts of property generally.

Each municipal corporation is authorized to receive any donations or gifts of real or personal property which may be made to it by deed of gift, will, or otherwise, subject to such conditions as may be specified in the instrument giving or donating the property, if the governing body of the municipal corporation approves of such conditions. (Ga. L. 1892, p. 104, § 1; Civil Code 1895, § 740; Civil Code 1910, § 887; Code 1933, § 69-501.)

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

Bequests for charitable purposes. — Incorporated city of this state is authorized, under former Civil Code 1910, §§ 887 and 888 (see O.C.G.A. §§ 36-37-2 and 36-37-3), to receive and apply bequest for charitable purposes. Moss v. Youngblood, 187 Ga. 188, 200 S.E. 689 (1938).

Any condition on the gift might be imposed by persons making donation that would not conflict with either constitutional or general law of state. Tillman v. Mayor of Athens, 206 Ga. 289, 56 S.E.2d 624 (1949).

Governing body of municipality receiving gift must approve conditions imposed by persons making gift; this is the sole restriction of this section. Tillman v. Mayor of Athens, 206 Ga. 289, 56 S.E.2d 624 (1949) (see O.C.G.A. § 36-37-2).

Cited in Settelmayer v. Hartsfield, 216 Ga. 246, 115 S.E.2d 520 (1960).

OPINIONS OF THE ATTORNEY GENERAL

Deed containing reversionary clause. — Georgia Historical Commission (now Department of Natural Resources) cannot accept deed from city containing reversionary clause for land on which state funds to be used. 1962 Op. Att'y Gen. p. 395.

Reimbursement by petition sponsor for referendum costs. — Municipalities are not authorized to receive funds from the sponsor of a petition calling for a referendum on the question of the sale of distilled spirits by the drink to reimburse the municipality for the costs and expense of holding the referendum. 1984 Op. Att'y Gen. No. 84-36.

Sale of donated property exempted from bid process. — Disposition of real property donated to a municipality upon the approved condition for use as a hospital is excepted by O.C.G.A. § 36-37-2 from the sealed bid or auction procedure of O.C.G.A. § 36-37-6; however, the city officials must exercise the utmost good faith, fidelity and integrity to obtain the best price in any sale of the property. 1984 Op. Att'y Gen. No. U84-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 470.

ALR. — Power of municipal corporation or other political body to accept and administer trust, 10 ALR 1368.

36-37-3. Municipal corporations as trustees for donated or gifted property generally.

Municipal corporations may act as trustees under any conveyance or will donating or giving property for charitable or eleemosynary purposes. (Ga. L. 1892, p. 104, § 2; Civil Code 1895, § 741; Civil Code 1910, § 888; Code 1933, § 69-502.)

JUDICIAL DECISIONS

Bequests for charitable purposes. — Incorporated city of this state is authorized, under former Civil Code 1910, §§ 887 and 888 (see O.C.G.A. §§ 36-37-2 and 36-37-3), to receive and apply bequest for charitable purposes. Moss v. Youngblood, 187 Ga. 188, 200 S.E. 689 (1938).

Devises for parks. — Georgia cities and towns are authorized to accept devises of property for establishment and preservation of "parks and pleasure

grounds" and to hold the property thus received in charitable trust for the exclusive benefit of the class of persons named by the testator. Evans v. Abney, 396 U.S. 435, 90 S. Ct. 628, 24 L. Ed. 2d 634 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 472, 483.

C.J.S. — 63 C.J.S., Municipal Corporations, § 1142.

ALR. — Power of municipal corporation or other political body to accept and administer trust, 10 ALR 1368.

Liability of township trustees for loss of public funds, 18 ALR 982.

36-37-4. Receipt of cemetery or burial lots in trust; annual returns; commissions.

Any person may convey to the mayor and council of any municipal corporation in this state any money or property to be held by the mayor and council in trust, the corpus or increase thereof to be expended, as directed by such conveyance, in the improvement or preservation and care of any cemetery or of the burial lots of such owner therein. The mayor and council shall receive and hold the property and execute such trusts, according to the terms thereof, as other trusts are executed under the laws of this state. They shall make annual returns to the judge of the probate court and shall be entitled to such commissions as are paid to other trustees, but they shall not be required to give bond. (Ga. L. 1889, p. 178, § 1; Civil Code 1895, § 742; Civil Code 1910, § 889; Code 1933, § 69-503.)

JUDICIAL DECISIONS

Cited in Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 14 Am. Jur. 2d, Cemeteries, § 17 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 471.

ALR. — Validity and reasonableness of rules and regulations of cemetery company or association as to improvement or care of lots, 32 ALR 1406; 47 ALR 70.

Injunction against removal of, or interference with, remains interred in burial lot, 33 ALR 1432.

Cemetery property and cemetery lots as subject to assessment for public improvement, in absence of express exemption, 71 ALR 322.

36-37-5. Municipal corporation as trustee of funds donated to cemetery.

Any municipal corporation of this state may act as trustee of any funds donated to any cemetery within the limits of the municipal corporation. (Ga. L. 1953, Jan.-Feb. Sess., p. 34, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 472, 483.

ALR. — Power of municipal corporation or other political body to accept and administer trust, 10 ALR 1368.

36-37-6. Disposition of municipal property generally.

(a) Except as otherwise provided in subsections (b) through (j) of this Code section, the governing authority of any municipal corporation disposing of any real or personal property of such municipal corporation shall make all such sales to the highest responsible bidder, either by sealed bids or by auction after due notice has been given. Any such municipal corporation shall have the right to reject any and all bids or to cancel any proposed sale. The governing authority of the municipal corporation shall cause notice to be published once in the official legal organ of the county in which the municipality is located or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a general description of the property to be sold if the property is personal property or a legal description of the property to be sold if the property is real property. If the sale is by sealed bids, the notice shall also contain an invitation for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids. If the sale is by auction, the notice shall also contain the conditions of the proposed sale and shall state the date, time, and place of the proposed sale. Bids received in connection with a sale by sealed bidding shall be opened in public at the time and place stated in the legal notice. A tabulation of all bids received shall be available for public inspection following the opening of all bids. All such bids shall be retained and kept available for public inspection for a period of not less than 60 days from the date on which such bids are opened. The provisions of this subsection shall not apply to any transactions authorized in subsections (b) through (j) of this Code section.

(b) The governing authority of any municipal corporation is authorized to sell personal property belonging to the municipal corporation

which has an estimated value of $500.00 or less and lots from any municipal cemetery, regardless of value, without regard to subsection (a) of this Code section. Such sales may be made in the open market without advertisement and without the acceptance of bids. The estimation of the value of any such personal property to be sold shall be in the sole and absolute discretion of the governing authorities of the municipal corporation or their designated agent.

(c) Nothing in this Code section shall prevent a municipal corporation from trading or exchanging real property belonging to the municipal corporation for other real property where the property so acquired by exchange shall be of equal or greater value than the property previously belonging to the municipal corporation; provided, however, that within six weeks preceding the closing of any such proposed exchange of real property, a notice of the proposed exchange of real property shall be published in the official organ of the municipal corporation once a week for four weeks. The value of both the property belonging to the municipal corporation and that to be acquired through the exchange shall be determined by appraisals and the value so determined shall be approved by the proper authorities of said municipal corporation.

(d) The governing authority of any municipal corporation is authorized to sell real property in established municipal industrial parks or in municipally designated industrial development areas for industrial development purposes without regard to subsection (a) or (b) of this Code section.

(e)(1) This Code section shall not apply to any municipal corporation which has a municipal charter provision setting forth procedures for the sale of municipal property and existing as of January 1, 1976, so long as such charter provision thereafter remains unchanged and as long as such charter provision contains the minimum notice requirements as set forth in subsection (a) of this Code section.

(2) This Code section shall not apply to the disposal of property:

(A) Which is acquired by deed of gift, will, or donation and is subject to such conditions as may be specified in the instrument giving or donating the property;

(B) Which is received from the United States government or from this state pursuant to a program which imposes conditions on the disposal of such property;

(C) Which is disposed of pursuant to the powers granted in Chapter 61 of this title, the "Urban Redevelopment Law," or a homesteading program;

(D) Which is sold or transferred to another governing authority or government agency for public purposes; or

(E) Which is no longer needed for public road purposes and which is disposed of pursuant to Code Section 32-7-4.

(f) Notwithstanding any provision of this Code section or of any other law or any ordinance to the contrary, the governing authority of any municipal corporation is authorized to sell real property within its corporate limits for museum purposes to either a public authority or a nonprofit corporation which is classified as a public foundation (not a private foundation) under the United States Internal Revenue Code, for the purpose of building, erecting, and operating thereon a museum or facility for the development or practice of the arts. Such sale may be made in the open market or by direct negotiations without advertisement and without the acceptance of bids. The estimation of the value of any property to be sold shall be in the sole and absolute discretion of the governing authority of the municipality or its designated agent; provided, however, that nothing shall prevent a municipality from trading or swapping property with another property owner if such trade or swap is deemed to be in the best interest of the municipality.

(g) Notwithstanding any provision of this Code section or of any other law or ordinance to the contrary, the governing authority of any municipal corporation is authorized to sell and convey parcels of narrow strips of land, so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development ordinances, or as streets, whether owned in fee or used by easement, to abutting property owners where such sales and conveyances facilitate the enjoyment of the highest and best use of the abutting owner's property without first submitting the sale or conveyance to the process of an auction or the solicitation of sealed bids; provided, however, that each abutting property owner shall be notified of the availability of the property and shall have the opportunity to purchase said property under such terms and conditions as set out by ordinance.

(h) Notwithstanding any provision of this Code section to the contrary or any other provision of law or ordinance to the contrary, whenever any municipal corporation determines that the establishment of a facility of the state or one of its authorities or other instrumentalities or of a bona fide nonprofit resource conservation and development council would be of benefit to the municipal corporation, by way of providing activities in an area in need of redevelopment, by continuing or enhancing local employment opportunities, or by other means or in other ways, such municipal corporation may sell or grant any of its real or personal property to the state or to any of its authorities or instrumentalities or to a bona fide nonprofit resource conservation and development council and, further, may sell or grant such lesser interests, rental agreements, licenses, easements, and other

dispositions as it may determine necessary or convenient. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way.

(i)(1) As used in this subsection, the term "lake" means an impoundment of water in which at least 1,000 acres of land were to be submerged.

(2) Notwithstanding any provision of this Code section or any other law to the contrary, whenever any municipality has acquired property for the creation or development of a lake, including but not limited to property the acquisition of which was reasonably necessary or incidental to the creation or development of that lake, and the governing authority of such municipality thereafter determines that all or any part of the property or any interest therein is no longer needed for such purposes because of changed conditions, that municipality is authorized to dispose of such property or interest therein as provided in this subsection.

(3) In disposing of property, as authorized under this subsection, the municipality shall notify the owner of such property at the time of its acquisition or, if the tract from which the municipality acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the municipality acquired its property. The notice shall be in writing delivered to the appropriate owner or by publication if such owner's address is unknown; and such owner shall have the right to acquire, as provided in this subsection, the property with respect to which the notice is given. Publication, if necessary, shall be in a newspaper of general circulation in the municipality where the property is located.

(4) When an entire parcel acquired by the municipality or any interest therein is being disposed of, it may be acquired under the right created in paragraph (3) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition. When only remnants or portions of the original acquisition are being disposed of, they may be acquired for the market value thereof at the time the municipality decides the property is no longer needed.

(5) If the right of acquisition is not exercised within 60 days after due notice, the municipality shall proceed to sell such property as provided in subsection (a) of this Code section. The municipality shall thereupon have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(j)(1) As used in this subsection, the term:

(A) "Conservation easement" shall have the same meaning as set forth in Code Section 44-10-2.

(B) "Holder" shall have the same meaning as set forth in Code Section 44-10-2.

(2) Notwithstanding any provision of this Code section or of any other law or ordinance to the contrary, whenever the governing authority of any municipal corporation determines that the establishment of a conservation easement would be of benefit to the municipal corporation and to its citizens, such governing authority may sell or grant to any holder a conservation easement over any of its real property, including but not limited to any of its real property set aside for use as a park. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way; provided, however, that a conservation easement may not be created, granted, or otherwise conveyed for the purpose of preventing, frustrating, or interfering with the exercise of the power of eminent domain by any public utility or other entity authorized to exercise the power of eminent domain.

(k)(1) Notwithstanding any provision of this Code section or any other law to the contrary, the General Assembly by local Act may authorize the governing authority of any municipal corporation to lease or enter into a contract for a valuable consideration for the operation and management, and renewals and extensions thereof, of any real or personal property comprising fairgrounds, ballfields, golf courses, swimming pools, or other like property used primarily for recreational purposes for a period not to exceed five years to a nonprofit corporation which is qualified as exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 that will covenant to use and operate the property for annual regional fair purposes or to continue the recreational purpose for which the property was formerly used and intended on a nondiscriminatory basis for the use and benefit of all citizens of the community; provided, however, that nothing in this subsection shall have the effect of authorizing alienation of title to such property in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or that would cause the divesting of title to property dedicated to public use and not subsequently abandoned; and provided further, that the lessee or contractee under a management contract shall not mortgage or pledge the property as security for any debt or incur any encumbrance that could result in a lien or claim of lien against the property. The lease or management contract may provide for options to renew such lease or management contract for not more than three renewal periods and each such renewal period shall not be greater than the original length of such lease or management contract. As a condition of any lease or management contract, the lessee or contractee shall provide and maintain in force and effect throughout the term of such

lease or management contract sufficient liability insurance, in an amount not less than $1 million per claim, no aggregate, naming the municipality as a named insured; shall assume sole responsibility for or incur liability for any injury to person or property caused by any act or omission of such person while on the property; and shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand made by such person. As an additional condition of any such lease or management contract, the lessee or contractee shall provide to and maintain with the municipality a current copy of the liability insurance policy, including any changes in such policy or coverages as such changes occur, and shall provide proof monthly in writing to the municipality that the lessee or contractee has in force and effect the liability insurance required by this paragraph which the municipality shall retain on file. As a further condition of any lease or management contract, the lessee or contractee shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand arising out of any improvements to the property or any indebtedness or obligations incurred by the lessee or contractee in making any such improvements to such property. When the lessee or contractee charges any person to enter or go upon the land for the purpose of attending the annual regional fair or for attending or participating in recreational purposes, the consideration received by the municipal corporation for the lease or management contract shall not be deemed a charge within the meaning of Article 2 of Chapter 3 of Title 51.

(2) Any governing authority entering into a lease as provided in paragraph (1) of this subsection shall have the right unilaterally to terminate such lease after giving three months' notice of its intention to do so.

(3) Any lease entered into as provided in paragraph (1) of this subsection shall be automatically terminated upon conviction of the lessee or contractee for any offense involving the conduct of unlawful activity. In such event, any improvements to the property made by the lessee shall be forfeited. The municipality shall not be liable in any manner or subject to suit for any indebtedness or other obligations of the lessee or contractee associated with any such improvements to the property and shall take such improvements free and clear of any such indebtedness or other obligations.

(l)(1) Where not otherwise authorized by its charter or other applicable law, the governing authority of any municipal corporation may lease or enter into a contract for valuable consideration for the use, operation, or management of any real or personal property of the municipal corporation pursuant to the power granted by this subsection. The authority of any municipal corporation granted pursuant to

its charter or other applicable law to enter into leases or contracts for the use, operation, or management of any real or personal property of the municipal corporation shall not be affected by this subsection and it shall not apply to any contracts or leases entered into pursuant to such authority. Where a municipal charter or other applicable law provides no authorization for leasing or contracting for the use, operation, or management of any real or personal property of the municipal corporation and this subsection is to be used as authorization for that purpose, the following shall apply:

(A) Any lease or contract for the use, operation, or management of any real or personal property for longer than 30 days shall be by sealed bids or by auction as provided in subsection (a) of this Code section. Easements and licenses for the use of municipal property in connection with construction projects of a municipal corporation shall be exempt from this subparagraph, provided that their term is less than one year;

(B) Nothing in this subsection shall have the effect of authorizing alienation of title to such property in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or shall cause the divesting of title to property dedicated to public use and not subsequently abandoned; and

(C) The lessee or contractee shall not mortgage or pledge the property, lease or contract the property as security for any debt, or incur any encumbrance that could result in a lien or claim of lien against the property, lease, or contract.

(2) Any lease or contract for the use, operation, or management of any real or personal property entered into pursuant to this subsection and for longer than 30 days shall contain the following terms:

(A) The lessee or contractee shall provide and maintain in force in effect throughout the term of such lease or contract sufficient liability insurance, in an amount not less than $1 million per claim, no aggregate, naming the municipality as a named insured;

(B) The lessee or contractee shall assume sole responsibility for or incur liability for any injury to person or property caused by any act or omission of any person while on the property and shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand made by any person; and

(C) The lessee or contractee shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand arising out of any improvements to the property or any indebtedness or obligations incurred by the lessee or contractee in making any such improvement to such property.

(3)(A) The initial term of a lease or contract for the use of real property entered into pursuant to this subsection shall be no longer than five years and there may be one renewal period of no longer than five years, after which the lease or contract shall again be subject to sealed bids or auction.

(B) When the lessee or contractee charges any person to enter or go upon the real property for recreational purposes, the consideration received by the municipal corporation for the lease or contract shall not be deemed a charge within the meaning of Article 2 of Chapter 3 of Title 51.

(C) Where real property is leased pursuant to this Code section for the erection of telecommunications towers, the initial term of a lease or contract for the use of such real property shall be no longer than ten years and there may be one renewal period of no longer than ten years, after which the lease or contract shall again be subject to sealed bids or auction; provided, however, that such lease shall also include provisions for the removal of the telecommunications tower structure.

(4) Where this subsection is applicable, it shall apply to any lease or contract entered into or renewed on or after July 1, 2011. This subsection shall not affect any provisions of subsection (k) of this Code section.

(5) Nothing contained in this Code section shall be construed so as to expand the powers of eminent domain or to otherwise provide for additional eminent domain authority for any municipal corporation. The ability for a governing authority of a municipal corporation to exercise eminent domain shall be subject to the limitations enumerated in Chapter 2 of Title 22 and the Georgia Constitution. (Code 1933, § 69-318, enacted by Ga. L. 1976, p. 350, § 1; Ga. L. 1978, p. 890, §§ 1, 2; Ga. L. 1981, p. 831, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1987, p. 1051, § 2; Ga. L. 1989, p. 1418, § 1; Ga. L. 1990, p. 877, § 2; Ga. L. 1992, p. 1348, § 2; Ga. L. 1993, p. 795, § 1; Ga. L. 2001, p. 863, § 1; Ga. L. 2004, p. 1076, § 1; Ga. L. 2005, p. 60, § 36/HB 95; Ga. L. 2010, p. 1078, § 2/SB 390; Ga. L. 2011, p. 240, § 3A/HB 280; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2010 amendment, effective June 4, 2010, substituted "(j)" for "(i)" twice in subsection (a); added subsection (j); redesignated former subsection (j) as present subsection (k); and added subsection (l).

The 2011 amendment, effective July 1, 2011, rewrote subsection (l).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (j)(2).

Cross references. — Discretion of governing body as to management and disposition of property, § 36-30-2. Acquisition of facilities, § 36-34-3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, in subsection (j)(1) (now subsection (k)(1)), in the

first sentence "purpose for which" was substituted for "purpose to which", "effect of" was substituted for "affect of", in the third sentence "insured" was substituted for "insured,", "act or omission" was substituted for "act of omission", "property;" was substituted for "property,", and "of Chapter 3" was inserted at the end.

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Law reviews. — For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 69-203 are included in the annotations for this Code section.

Property held by municipality for governmental or public uses cannot be sold without express legislative authority, but must be devoted to the use and purpose for which the property was intended. Harper v. City Council, 212 Ga. 605, 94 S.E.2d 690 (1956) (decided under former Ga. L. 1956, p. 22 and local law).

Distinction between land held in governmental and proprietary capacities. — There is a clear distinction between property purchased by a municipal corporation and held for use by the municipal corporation as an entity, or in the municipality's proprietary capacity, and property purchased by the city for the public use and benefit of the municipality's citizens. As to property acquired for strictly corporate purposes and held in the municipal corporation's proprietary capacity, the power to dispose is unquestioned, but as to the latter, in the absence of express legislative authority, it is only when the public use has been abandoned or the property has become unsuitable or inadequate for the purpose to which the property was dedicated that the city has the power to dispose of such property. Harper v. City Council, 212 Ga. 605, 94 S.E.2d 690 (1956) (decided under former Ga. L. 1956, p. 22 and local law).

Property held by a municipality for governmental or public uses cannot be sold without express legislative authority, but must be devoted to the use and purpose for which the property was intended. The rule is otherwise as to property held by a municipality in the municipality's proprietary or private capacity when not devoted to any specific public use. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396 (1953) (decided under former Code 1933, § 69-203).

Though land be bought for public use, if not actually used for such purpose it cannot be said to be held by municipality affected by public trust, and may be sold. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396 (1953) (decided under former Code 1933, § 69-203).

When property held by municipality for governmental or public use is abandoned as to such use, the municipality may sell the property without express legislative approval. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396 (1953) (decided under former Code 1933, § 69-203).

Power to swap and trade. — General Assembly did not intend by minor rearrangement of O.C.G.A. § 36-37-6 to expand the powers of municipalities, or to relieve the municipalities of the bidding

requirements of the 1976 act, or to alter settled principles of the common law restricting the alienation of dedicated public lands; the power to swap and trade cemetery lots and personal property of limited value remains just that, and nothing more. Tuten v. City of Brunswick, 262 Ga. 399, 418 S.E.2d 367 (1992).

Proposed land exchange between city and church was ultra vires because the city lacked the power to dispose of the land by virtue of subsection (c) of O.C.G.A. § 36-37-6 which is not so substantive or reliable an expression of legislative intent as to vitiate the bidding requirements of subsection (a) nor to generate a radical inflation of subsection (b) to authorize a city to "swap" or "trade" all of the city's public property. Tuten v. City of Brunswick, 262 Ga. 399, 418 S.E.2d 367 (1992).

No lease of park for term of years for private gain. — Weight of authority is that a municipal park is a public utility, and a portion thereof cannot be leased for a term of years for private gain. Harper v. City Council, 212 Ga. 605, 94 S.E.2d 690 (1956) (decided under former Ga. L. 1956, p. 22 and local law).

Preexisting option contracts. — O.C.G.A. § 36-37-6 has no application to the exercise of an option to purchase real estate which was granted prior to the statute's enactment. Silver v. City of Rossville, 253 Ga. 13, 315 S.E.2d 898 (1984).

Cited in DOT v. City of Atlanta, 255 Ga. 124, 337 S.E.2d 327 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Lease to private entity prohibited absent express authority. — Property held by a municipality for the public use and the benefit of the municipality's citizens cannot be leased to a private entity without express legislative authority, in the absence of other applicable exceptions. 1992 Op. Att'y Gen. No. U92-9.

Sale of donated property exempted. — Disposition of real property donated to a municipality upon the approved condition for use as a hospital is excepted by O.C.G.A. § 36-37-2 from the sealed bid or auction procedure of O.C.G.A. § 36-37-6; however, city officials must exercise the utmost good faith, fidelity, and integrity to obtain the best price in any sale of the property. 1984 Op. Att'y Gen. No. U84-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 14 Am. Jur. 2d, Cemeteries, §§ 3, 9. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 485 et seq., 515.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 1152 et seq., 1162. 64A C.J.S., Municipal Corporations, § 2493.

ALR. — Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 ALR 1052.

Lease of property by municipality or other political subdivision, with option to purchase same, as evasion of constitutional or statutory limitation of indebtedness, 71 ALR 1318; 145 ALR 1362.

Lease or sale of municipal plant or contract therefor as affecting right of municipality to compete, 118 ALR 1030.

Implied or inherent power of municipal corporation to sell its real property, 141 ALR 1447.

Right and capacity of taxpayer to attack sale by municipal corporation or other taxing unit of its property, 17 ALR2d 475.

Power of municipal corporation to exchange its real property, 60 ALR2d 220.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 ALR2d 595.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 ALR4th 822.

36-37-6.1. Sale, exchange, lease, or grant of easement over property used for recreational purposes by incorporated municipalities having population greater than 300,000.

(a) This Code section shall be applicable to incorporated municipalities of the State of Georgia having a population of more than 300,000 according to the United States decennial census of 1960 or any future such census.

(b) All such municipalities shall have authority to sell, exchange, or otherwise dispose of any real or personal property comprising parks, playgrounds, golf courses, swimming pools, or other like property used primarily for recreational purposes, provided that nothing in this Code section shall have the effect of authorizing alienation where such would be in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or where such alienation would cause divesting of title to a park, playground, golf course, swimming pool, or other like property that had been dedicated to public use and not subsequently abandoned.

(c)(1) All such municipalities shall have authority to lease out and grant easements over property used primarily for recreational purposes to others consistent with general park and recreational purposes for a period not exceeding 50 years and for a valuable consideration. Any such recreational property which was formerly used for annual regional fair purposes but is no longer so used may be leased by any such municipality to one or more private entities for terms of not more than 50 years each for development and use as motion picture and television production, processing, and related facilities together with all such support and service facilities as are necessary or convenient to such use.

(2) All such municipalities shall have authority to enter into contracts and renewals and extensions of contracts for the cooperative operation, maintenance, cooperative management, and funding of property which in no way limits the governance or the policy role of said municipalities which property is used primarily for recreational purposes consistent with general park and recreational purposes, for periods not exceeding ten years and for a valuable consideration. (Ga. L. 1967, p. 3022, §§ 1-3; Ga. L. 1981, p. 3196, § 1; Code 1981, § 36-37-6.1, enacted by Ga. L. 1982, p. 2107, § 40; Ga. L. 1991, p. 796, § 1.)

Editor's notes. — The provisions of this Code section were previously enacted in substantially similar form by Ga. L. 1967, p. 3022, §§ 1-3, and Ga. L. 1981, p. 3196, § 1. However, those provisions were not enacted as part of the original Code by the Code enactment Act (Ga. L. 1981, Ex. Sess., p. 8).

Law reviews. — For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986). For annual survey of recent developments, see 38 Mercer L. Rev. 473 (1986).

JUDICIAL DECISIONS

Cited in DOT v. City of Atlanta, 255 Ga. 124, 337 S.E.2d 327 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Lease to private entity prohibited absent express authority. — Property held by a municipality for the public use and the benefit of the municipality's citizens cannot be leased to a private entity without express legislative authority in the absence of other applicable exceptions. 1992 Op. Att'y Gen. No. U92-9.

36-37-6.2. Purchase or other acquisition of real property on time or partly for cash; securing of balance; limitation on liability.

(a) As used in this Code section, the term "governing body" means the mayor and city council, the commissioner and commissioners, or either or both as the case may be, or the "governing body" by whatever name called of any city coming under this Code section.

(b) Any city in this state having a population of 200,000 or more according to the United States decennial census of 1920 or any future such census may, through its governing body, purchase on time or partly for cash, with the balance on time or deferred payments, or otherwise acquire any real property or interest in real property within or outside the limits of such city, securing the note or claim for deferred payments and interest thereon with mortgages or deed of trust on the land purchased or with or by means of an instrument in writing retaining title thereto in the vendor, or enter into any other contractual arrangement whereby provision is made that such note, claim, or other instruments for deferred payment and interest thereon, and all lawful charges, shall not be a charge or charges against the general credit of the city, or be a general liability thereof, but that the liability shall only extend to and be a charge against the land so purchased or acquired. Such method of acquisition provided for in this Code section shall not be considered or deemed exclusive but shall be cumulative and in addition to all other methods of acquisition of lands or interests therein for public purposes provided heretofore, hereafter, or by other provisions of this Code section. (Ga. L. 1929, p. 303, §§ 1, 2; Code 1981, § 36-37-6.2, enacted by Ga. L. 1982, p. 2107, § 41; Ga. L. 1987, p. 3, § 36.)

Editor's notes. — The provisions of this Code section were previously enacted in substantially similar form by Ga. L 1929, p. 303, §§ 1 and 2. However, those

provisions were not enacted as part of the original Code by the Code enactment Act (Ga. L. 1981, Ex. Sess., p. 8).

36-37-7. Disposition of public utility plants or properties — Power generally; effect of charter restrictions.

Municipalities are empowered and authorized, if they so desire, to sell, lease, or otherwise dispose of any or all electric, water, gas, or other municipally owned public utility plants or properties, on such terms and conditions as such municipalities deem proper, and to transfer title to such public utility properties by warranty deed, bill of sale, contract, or lease, in the manner provided by law; provided, however, that nothing contained in this Code section and Code Sections 36-37-8 through 36-37-10 shall be held or construed to affect the powers of any municipal corporation in the charter of which there is now contained any provision either authorizing or prohibiting the sale, lease, or other disposition of such properties by the municipality, so long as such provision remains in the charter of the municipality. (Ga. L. 1925, p. 177, § 1; Code 1933, § 91-901.)

JUDICIAL DECISIONS

Sections do not limit authority of city to dispose of property under charter. — Language in a city charter authorizing the city to dispose of property the city owns "in any manner whatsoever" is not limited by the provisions of former Code 1933, §§ 91-901 through 91-904 (see O.C.G.A. §§ 36-37-7 through 36-37-10). Singer v. City of Cordele, 225 Ga. 323, 168 S.E.2d 138 (1969).

Cited in Brown v. Mayor, 199 Ga. 234, 33 S.E.2d 705 (1945).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 508 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 1152 et seq., 1162, 1165. 64A C.J.S., Municipal Corporations, § 2493.

ALR. — Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 ALR 1052.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 ALR2d 595.

36-37-8. Disposition of public utility plants or properties — Notice of intent to dispose; petition objecting to disposition; election and notice.

Notice of intention to make such sale, lease, or other disposition of a municipal waterworks or electric or gas plant, setting out the price and other general terms and conditions of the proposed sale, lease, or disposition, shall be given by publication once a week for three consecutive weeks in some newspaper published in the municipality and, if no newspaper is published in the municipality, then in some

newspaper published in the county in which the municipality is located and, if there is no such newspaper, then in some newspaper having a general circulation in the municipality. After ten days from the last publication of such notice, the plant may be disposed of unless, within ten days after the last publication of the notice, a petition signed by not less than 20 percent of the qualified voters of the municipality is filed, objecting to and protesting against the sale, lease, or disposition. If the petition, so signed, is filed, the sale shall not be made unless submitted to a special election ordered for the purpose of determining whether a majority, which shall constitute two-thirds of those voting at the election, favors the sale, lease, or other disposition. Such election shall be ordered by the municipality to be held not less than 50 days after the date of the filing of the objecting petition with the municipality. The election shall be held in accordance with and in all respects be governed by the Acts of the General Assembly in regard to elections to determine whether municipalities shall issue bonds or not. The notice of the election shall state its purpose. (Ga. L. 1925, p. 177, § 2; Code 1933, § 91-902.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 509.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 1152 et seq., 1162, 1165.

ALR. — Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 ALR 1052.

36-37-9. Disposition of public utility plants or properties — Ballots for election.

The ballots provided for the election shall have plainly written or printed thereon the words "Shall the waterworks, electric, or gas plant (as the case may be), be sold, leased, or disposed of (as the case may be)?" Beside such words shall be suitably placed, on separate lines, the words "Yes" and "No," so that the voter may indicate the way he desires to vote on the question submitted. (Ga. L. 1925, p. 177, § 3; Code 1933, § 91-903; Ga. L. 1982, p. 3, § 36.)

36-37-10. Disposition of public utility plants or properties — Proposed disposition determined by two-thirds vote.

If two-thirds of those voting in the election vote in favor of such sale, lease, or disposition, the proper officers of the municipal corporation may proceed to sell, lease, or dispose of such plant in accordance with the terms and conditions set out in the notice of proposed intention to sell, lease, or dispose of such plant. If such election is determined against the sale, lease, or disposition of the plant, the plant shall not be

sold, leased, or disposed of but shall remain the property of the municipality. (Ga. L. 1925, p. 177, § 4; Code 1933, § 91-904.)

RESEARCH REFERENCES

ALR. — Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 ALR 1052.

CHAPTER 38

BONDS

Article 1

General Provisions

Sec.
36-38-1. Investment of funds acquired by tax levied to pay bonded indebtedness generally.
36-38-2. Sale of municipal bonds and use of proceeds for retirement of earlier bonds.
36-38-3. Registration of bonds in which municipal funds invested in name of municipal corporation.
36-38-4. Registration of bonds in name of owner.

Article 2

Compromise of Bonded Debt

Sec.
36-38-20. Authority to compromise bonded debt; rights of dissenting creditors not prejudiced.
36-38-21. Issuance of new bonds for outstanding bonds.
36-38-22. Issuance and exchange of bonds; contractual effect of ordinance.
36-38-23. Sinking funds for redemption of new bonds; appointment of commission to manage fund; contractual effect of ordinance.

ARTICLE 1

GENERAL PROVISIONS

36-38-1. Investment of funds acquired by tax levied to pay bonded indebtedness generally.

Every municipal corporation and the officer or officers of any municipal corporation in this state who are charged with the custody of funds raised in pursuance of Article IX, Section V, Paragraph VI of the Constitution of this state are required, under the direction of the mayor and council of the municipal corporation or a duly constituted and authorized committee of the same, to invest, within six months from their collection, all sums collected by the municipal corporation under the requirements of such paragraph of the Constitution, for the purpose of paying the principal of the bonded indebtedness of the municipal corporation, which sums are not actually payable on such principal within 12 months from the date of collection thereof. Such sums may be invested in valid outstanding bonds of such municipal corporation or of some other municipal corporation in this state of equal or larger size, which bonds have been duly validated in accordance with law, or in county bonds of this state which have been duly validated, or in valid outstanding bonds of this state or of the United States. The officer or officers of the municipal corporation shall keep such funds so invested in such bonds, with the privilege of changing the investment from one character of the bonds named to another from time to time as the mayor and council may direct, until such time before the maturity of outstanding obligations as may be necessary to dispose of the same in order to

meet such obligations at maturity. (Ga. L. 1910, p. 100, §§ 1, 2; Code 1933, §§ 87-701, 87-702; Ga. L. 1983, p. 3, § 57.)

Law reviews. — For note discussing and comparing the prudent man rule and the legal list rule in trustee investment, see 15 Mercer L. Rev. 530 (1964).

JUDICIAL DECISIONS

Under this section, the municipality is "required" to invest the funds as stipulated. No discretion is left to the municipal authorities. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932) (see O.C.G.A. § 36-38-1).

Law with regard to investment of sinking funds of municipality differs from that in case of funds held by county treasurer. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

Loan of sinking fund. — If the fund is loaned to a bank on a time certificate, by the municipal officers, such contract of loan is illegal and void, as contrary to this section, and will not preclude the municipality from taking steps, before the maturity of such certificate, to compel the bank to turn over the certificate to the city, such bank being the designated depository of the funds of the city, and having knowledge that the fund so loaned is the sinking fund of the city. Hogansville Banking Co. v. City of Hogansville, 156 Ga. 855, 120 S.E. 604 (1923) (see O.C.G.A. § 36-38-1).

No contract exists when funds deposited in violation of section. — When a sinking fund, collected by taxation for the purpose of retiring bonded indebtedness, is deposited in a bank in violation of the provisions of this section, no effectual contract exists between the bank and the municipality as a depositor. The municipality cannot attempt to legalize the attempted contract by a later ratification. Town of Douglasville v. Mobley, 169 Ga. 53, 149 S.E. 575 (1929) (see O.C.G.A. § 36-38-1).

Cited in Union Banking Co. v. City of Douglas, 175 Ga. 82, 165 S.E. 54 (1932); Union Banking Co. v. City of Douglas, 177 Ga. 637, 171 S.E. 131 (1933).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2184, 2185.

ALR. — Liability of officer for loss of sinking fund through failure of bank, 25 ALR 1358.

36-38-2. Sale of municipal bonds and use of proceeds for retirement of earlier bonds.

Whenever a municipal corporation invests its sinking fund in bonds issued by itself, if such bonds mature at a date beyond the maturity of other bonds of such municipal corporation such later bonds may be sold by the municipal corporation or the sinking fund commission and the funds therefrom used to retire earlier municipal bonds as they mature. (Ga. L. 1923, p. 123, § 3a; Code 1933, § 87-703; Ga. L. 1935, p. 417, § 2.)

Law reviews. — For note discussing and comparing the prudent man rule and the legal list rule in trustee investment, see 15 Mercer L. Rev. 530 (1964).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2186, 2187.

36-38-3. Registration of bonds in which municipal funds invested in name of municipal corporation.

Whenever and as soon as the sinking fund of any municipal corporation has been invested in municipal, county, state, or federal government bonds as required by Code Section 36-38-1, the officer or officers of such municipal corporation charged with the custody of its funds and securities shall proceed forthwith to have the securities in which such funds are so invested registered in the name of the municipal corporation, provided such bonds by their terms under the conditions of their issue are capable of being registered in the name of the owner. (Ga. L. 1910, p. 100, § 4; Code 1933, § 87-704.)

36-38-4. Registration of bonds in name of owner.

Every issue of municipal bonds shall provide that at the owner's option the same may be registered in the owner's name, both as to principal and interest. (Ga. L. 1910, p. 100, § 5; Code 1933, § 87-705.)

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2180.

ARTICLE 2

COMPROMISE OF BONDED DEBT

36-38-20. Authority to compromise bonded debt; rights of dissenting creditors not prejudiced.

The authorities of any municipal corporation of this state are authorized to compromise their bonded debt, in accordance with this article, provided that this article shall not be construed to prejudice the rights of such creditors as may refuse to assent to the compromise. (Ga. L. 1878-79, p. 85, § 1; Code 1882, § 508m(2); Civil Code 1895, § 758; Civil Code 1910, § 905; Code 1933, § 87-501.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 707, 708.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2528 et seq.

ALR. — Estoppel to deny validity of

municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 ALR 1027.

36-38-21. Issuance of new bonds for outstanding bonds.

Where there are outstanding bonds and coupons of any municipal corporation of this state, whether such bonds or coupons are due or to become due, the authorities may issue new bonds with coupons attached, to be exchanged and to stand in the place of such outstanding bonds and coupons, provided that the new bonds so issued shall not exceed in amount the previously existing total bonded debt, with interest thereon, of such municipal corporation. (Ga. L. 1878-79, p. 85, § 2; Code 1882, § 508m(3); Civil Code 1895, § 759; Civil Code 1910, § 906; Code 1933, § 87-502.)

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2186, 2187.

ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

36-38-22. Issuance and exchange of bonds; contractual effect of ordinance.

When the authorities of a municipal corporation desire to avail themselves of the benefit of Code Sections 36-38-20 and 36-38-21 and this Code section, they are authorized and empowered to pass any ordinance or ordinances to provide for the issuance and exchange of new bonds to stand in the place and stead of outstanding bonds and coupons, to determine the mode and method of such issuance and exchange, and to fix the length of time such new bonds shall run and the rate of interest they shall bear. Such ordinance or ordinances shall have the force and effect of contracts between the municipal corporation and those who may receive or hold such new bonds so issued and exchanged. (Ga. L. 1878-79, p. 85, § 3; Code 1882, § 508m(4); Civil Code 1895, § 760; Civil Code 1910, § 907; Code 1933, § 87-503.)

RESEARCH REFERENCES

ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

36-38-23. Sinking funds for redemption of new bonds; appointment of commission to manage fund; contractual effect of ordinance.

If any municipal corporation availing itself of this article desires to provide a sinking fund for the redemption of such new bonds, the authorities may pass all ordinances necessary for that purpose and create a commission for the management of such sinking fund and its proper use and application. The commission shall be composed of not less than three nor more than five residents of the municipal corporation. The ordinance or ordinances providing for the sinking fund and for the commission, along with its management and application, the mode of appointing the members thereof, and its duties, shall have the force and effect of law and shall be held and considered as part of the contract between the municipal corporation and the acceptors or holders of the new bonds. (Ga. L. 1878-79, p. 85, § 4; Code 1882, § 508m(5); Civil Code 1895, § 761; Civil Code 1910, § 908; Code 1933, § 87-504.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 5, 305.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2181 et seq.

ALR. — Liability of officer for loss of sinking fund through failure of bank, 25 ALR 1358.

Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 ALR 220.

Existing sinking fund as a factor in determining whether indebtedness or proposed indebtedness of municipality or other political subdivision exceeds constitutional or statutory limit, 125 ALR 1393.

CHAPTER 39

STREET IMPROVEMENTS

Sec.

36-39-1. Definitions.

36-39-2. Adoption of chapter; election; effect of adoption of chapter generally.

36-39-3. Procedure for improvements; adoption and publication of resolution; filing of petition by landowners; objections to improvements.

36-39-4. Basis of assessments for improvements; municipal corporation owner of intersecting streets fronting improvement; payment of assessments on frontage.

36-39-5. Improvements when county owns abutting property.

36-39-6. Paving by railroad having tracks in street.

36-39-7. Payment for street improvements and construction of water, gas, and sewer connections; payment of costs of connections.

36-39-8. Resolution letting contract for improvements following time for protests or filing of petition.

36-39-9. Work performed by municipal corporation; property owners' objections to performance of work by municipal corporation.

36-39-10. Publication and contents of notice of contract proposals.

36-39-11. Examination of bids and award of contract; readvertisement for bids.

36-39-12. Appointment of board of appraisers to appraise and apportion cost.

36-39-13. Filing of board of appraisers' report.

36-39-14. Hearing upon board of appraisers' report; review of report and objections; ordinance fixing assessments; taxation of interest.

Sec.

36-39-15. Time and manner of payment of assessments generally.

36-39-16. Payment of assessment in installments.

36-39-17. Assessments where portion of costs paid by municipal corporation.

36-39-18. Additional assessments.

36-39-19. Publication and contents of notice of due date of assessment; effect of failure to publish notice.

36-39-20. Lien for assessment and interest.

36-39-21. Execution, levy, and sale on unpaid assessments or interest generally.

36-39-22. Affidavit contesting amount of execution; trial by superior court; penalties for delay.

36-39-23. Collection and use of assessments generally; special fund; treasurer's bond.

36-39-24. Limitation period for contesting or enjoining assessments.

36-39-25. Issuance of bonds; payment; interest; terms; form.

36-39-26. Sale of bonds; delivery to contractors.

36-39-27. Disposition of proceeds from bonds remaining after payment.

36-39-28. Petition for validation of ordinance establishing assessments; time; contents.

36-39-29. Order to show cause on petition; time and notice of hearing.

36-39-30. Conduct of hearing; issuance of order by court.

36-39-31. Appeal from judgment of court.

36-39-32. Conclusiveness of superior court's final judgment.

36-39-33. Entry of reference to judgment on bonds following validation; use of entry as evidence.

36-39-34. Construction of chapter.

Cross references. — Acquisition of property by counties, municipalities, or other governmental entities for transportation purposes generally, T. 32, C. 3. Powers of municipalities with respect to municipal street systems generally, § 32-4-90 et seq.

Editor's notes. — Paragraph (11.1) of Ga. L. 1982, p. 3, § 36, effective November 1, 1982, repealed this chapter, but that repealer was in turn repealed by Ga. L. 1982, p. 502, § 2, effective November 1, 1982.

JUDICIAL DECISIONS

Constitutionality. — This chapter is not unconstitutional on the ground that it is in conflict with Ga. Const. 1976, Art. I, Sec. II, Para. VII (see, now, Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Wheat v. City of Bainbridge, 168 Ga. 479, 148 S.E. 332 (1929) (see O.C.G.A. Ch. 39, T. 36).

This chapter is not unconstitutional on the ground that it is general in its nature but not uniform in its operation, because it is made an alternative method of procedure, and its application is dependent upon its adoption by a favorable vote of the electors, whereas the Constitution does not contemplate the enactment of a law general in its nature, the application of which shall be optional with the municipality, either under a prior local law or a local law enacted subsequent to such general law. Wheat v. City of Bainbridge, 168 Ga. 479, 148 S.E. 332 (1929) (see O.C.G.A. Ch. 39, T. 36).

RESEARCH REFERENCES

ALR. — Governmental tort liability for injury to roller skater allegedly caused by sidewalk or street defects, 58 ALR4th 1197.

Legal aspects of speed bumps, 60 ALR4th 1249.

36-39-1. Definitions.

As used in this chapter, the term:

(1) "Frontage" means that side or limit of the lot or parcel of land in question which abuts on the improvement.

(2) "Governing body" means the mayor and council, board of aldermen, board of commissioners, or other chief legislative body of a municipal corporation.

(3) "Improve" and "improvement" include the grading, regrading, paving, repaving, macadamizing, and remacadamizing of streets, alleys, sidewalks, or other public places or ways and the construction, reconstruction, and altering of curbing, guttering, storm sewers, turnouts, water mains, and water, gas, or sewer connections therein.

(4) "Municipal corporation" means any city or town incorporated in this state, having a population of 600 or more.

(5) "Pave" includes storm draining, paving, macadamizing, and grading.

(6) "Streets" means streets, avenues, alleys, sidewalks, and other public places or ways. (Ga. L. 1927, p. 321, § 1; Code 1933, § 69-401.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 1 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 1, 3.

C.J.S. — 39A C.J.S., Highways, §§ 1, 140, 144. 40 C.J.S., Highways, § 175. 62 C.J.S., Municipal Corporations, § 1 et seq.

ALR. — Scope and import of term "owner" in statutes relating to real property, 2 ALR 778; 95 ALR 1085.

Obligation for local improvements as within municipal debt limit, 33 ALR 1415.

Right of municipality to hasten flow of surface water along natural drain ways by improvements of street or highway, 36 ALR 1463.

Assessment of right of way other than that of railroad or street railway for street or local improvement, 58 ALR 127.

Power to impose cost of maintenance or operation of street lighting system on local improvement district, 60 ALR 272.

Underground conduits for electric wires as local improvements supporting special assessments, 66 ALR 1389.

Character of improvement contemplated by statute, ordinance, or contract relating to "surface" or "resurface" of highway, 84 ALR 1158.

Special assessments: What constitutes reconstruction or the like, as distinguished from repair, of pavement, 41 ALR2d 613.

36-39-2. Adoption of chapter; election; effect of adoption of chapter generally.

The governing body of any municipal corporation in this state is authorized to hold an election or elections, at such time and under such conditions as may be determined by the governing body, for the purpose of adopting this chapter. When such election has been duly held, if a majority of the qualified electors voting therein voted in favor of such adoption, the election managers shall duly certify the results of the election to the governing body and the same shall be adopted and entered on the minutes thereof. Thereupon, the governing body of the municipal corporation shall be authorized and empowered to improve any street or streets in such municipal corporation whenever, in the judgment of the governing body, the public welfare or convenience requires such improvement, subject only to the conditions and limitations prescribed in this chapter. (Ga. L. 1927, p. 321, § 2; Code 1933, § 69-402.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 77.

C.J.S. — 39A C.J.S., Highways, § 36. 64 C.J.S., Municipal Corporations, § 1902.

ALR. — Estoppel of municipality to open or use street, 171 ALR 94.

36-39-3. Procedure for improvements; adoption and publication of resolution; filing of petition by landowners; objections to improvements.

(a) Whenever the governing body deems it necessary to improve any street or part thereof within the limits of the municipal corporation, either in length or in width, it shall, by resolution, declare such improvement necessary to be done and shall publish such resolution once a week for at least three consecutive weeks in the newspaper in which the sheriff's advertisements of the county in which the municipal corporation is located are published. If the owners of a majority of the lineal feet of frontage of the lands abutting on the proposed improvement, within 15 days after the last day of publication of the resolution, do not file with the clerk of the municipal corporation their protest in writing against the improvement, the governing body shall have the power to cause the improvement to be made, to contract therefor, and to make assessments and fix liens as provided for in this chapter. Any number of streets or any part or parts thereof to be so improved may be included in one resolution. Any protest or objection shall be made as to each street separately.

(b) If the owners of a majority of the lineal feet of frontage of the land liable to assessment for the improvement petition the governing body for the improvement, citing this chapter and designating by general description the improvement to be undertaken and the street or streets or part thereof to be improved, it shall thereupon be the duty of the governing body to proceed, as provided in this chapter, to cause such improvement to be made in accordance with the prayers of the petition and their own best judgment. In such cases the resolution mentioned in subsection (a) of this Code section shall not be required. The petition shall be lodged with the clerk of the municipal corporation, who shall investigate the sufficiency thereof, submit the petition to the governing body, and certify the result of his investigation. (Ga. L. 1927, p. 321, § 3; Code 1933, § 69-403.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1921, p. 212 are included in the annotations for this Code section.

Certificate of chief of construction is prima facie evidence. — By Ga. L. 1921, p. 212, the certificate of the chief of construction that the petition was signed by the owners of more than 50 percent of the property abutting on the street or portion of the street sought to be paved is made prima facie evidence of this fact. Ga. L. 1919, p. 821, makes this prima facie presumption conclusive, if the owners do not file objections to the passage of the preliminary ordinance providing for the payment. Montgomery v. City of Atlanta, 162 Ga. 534, 134 S.E. 152 (1926) (decided under Ga. L. 1921, p. 212).

Cited in City of La Grange v. Pound, 50 Ga. App. 219, 177 S.E. 762 (1934); Carter v. City of Toccoa, 210 Ga. 167, 78 S.E.2d 487 (1953).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, §§ 67, 68. 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 44, 103, 106, 198.

C.J.S. — 29 C.J.S., Eminent Domain, § 37 et seq.. 39A C.J.S., Highways, § 36. 64 C.J.S., Municipal Corporations, §§ 1282, 1805 et seq.

ALR. — Validity of promise based on invalid paving assessment, 20 ALR 1326.

Lack of or defects in petition of property owners for local improvement as affecting validity or enforcement of assessment, 95 ALR 116.

Failure of property owner to avail himself of remedy provided by statute or ordinance as precluding attack based on improper inclusion of property in, or exclusion of property from, assessment, 100 ALR 1292.

Utilization, under new proceeding for public improvement, of work done under a previously abandoned or invalid proceeding, 110 ALR 278.

Cotenancy as factor in determining representation of property owners in petition for, or remonstrance against, public improvement, 3 ALR2d 127.

Power of municipality or other governmental unit to make contract or covenant exempting or releasing property from special assessment, 47 ALR2d 1185.

Widening of city street as local improvement justifying special assessment of adjacent property, 46 ALR3d 127.

36-39-4. Basis of assessments for improvements; municipal corporation owner of intersecting streets fronting improvement; payment of assessments on frontage.

(a) Each lot or parcel of land abutting upon the improvement shall be charged on a basis of lineal foot frontage at an equal rate per foot of such frontage with its just pro rata share of the entire cost of the improvement, less any amounts paid by street or steam railways or others; provided, however, that the cost of the sidewalks, curbs, and gutters shall be charged entirely to the lots or parcels of land abutting on that side of the street upon which the same are constructed.

(b) The frontage of intersecting streets shall be assessed as real estate abutting upon the improvement and the municipal corporation, for all purposes of this chapter, shall be deemed to be the owner thereof. The mayor or chairman of the board of commissioners of the municipal corporation shall have authority to sign the petition or file the objections provided for in this chapter as to improvements affecting such frontage. The governing body of the municipal corporation shall pay from the municipal corporation treasury, as other current bills are paid, its just pro rata share of the entire cost of such an improvement, unless the owners of a majority of the frontage in the petition provided for in subsection (b) of Code Section 36-39-3 agree to pay the entire cost of the improvement or unless in the resolution provided for in subsection (a) of Code Section 36-39-3 it is stated that the entire cost of the improvement is to be paid by the owners of the abutting property. (Ga. L. 1927, p. 321, § 4; Code 1933, § 69-404.)

JUDICIAL DECISIONS

Obligation to pay for proportionate part of cost of public improvements may be created by law under authority given or by express contract. City of Hogansville v. Daniel, 52 Ga. App. 12, 182 S.E. 78 (1935).

Mistake of law by municipality will not raise implied obligation on part of property owner to pay for improvement. — When there is no legal liability resting on a citizen and abutting property owner to pay for public improvements or paving of a street, the law will not raise an implied obligation or quasi-contract to pay to the municipality making the improvements for the increased value of the owner's property arising because of the paving, even though the municipality at the time of the making of the improvements was laboring under a mistake of law as to the municipality's authority to levy assessments against the abutting property owner to pay for a proportionate part of the cost of making the improvements. City of Hogansville v. Daniel, 52 Ga. App. 12, 182 S.E. 78 (1935).

Immediate use of improvement to benefit abutting property not necessary. — Assessment against property for public improvements is not illegal because the improvement may not be immediately used beneficially in connection with the abutting property in its present condition. Incorporated Invs., Inc. v. City of Atlanta, 176 Ga. 509, 168 S.E. 10 (1933).

Property owner may be estopped to raise issue of confiscation. — When a city has obtained jurisdiction to make an assessment, and all the provisions of the act authorizing the assessment have been complied with, the property owner has been given fair opportunity to object, but fails to do so, and stands by and sees the improvement made without entering objection, the owner is estopped to raise the question of confiscation. City of McRae v. Folsom, 191 Ga. 272, 11 S.E.2d 900 (1940).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 345. 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 307.

C.J.S. — 29A C.J.S., Eminent Domain, § 360. 40 C.J.S., Highways, § 375 et seq. 64 C.J.S., Municipal Corporations, § 1281.

ALR. — Qualification of owner of property affected by public improvement to act in making assessment, 2 ALR 1207.

Loss of right to contest assessment in proceeding for street or sewer improvement by waiver, estoppel, or the like, 9 ALR 634.

Loss of right to contest assessment in drainage proceeding by waiver, estoppel, or the like, 9 ALR 842.

Validity of promise based on invalid paving assessment, 20 ALR 1326.

Validity of assessment for local improvement as affected by contingency upon which the award of a contract for a related improvement is dependent, 29 ALR 832.

Excessiveness or unfairness of assessment for highway improvement on property of railroad company, 48 ALR 497.

Assessments for improvements by the front-foot rule, 56 ALR 941.

Necessity that additional assessment in proceeding for local improvement precede incurring liability in excess of the original assessment, 63 ALR 1179.

Validity of ad valorem tax for highway purposes without attempt to apportion on basis of benefits, 72 ALR 1103.

Liability of abutting property to assessment for street paving as affected by character or extent of traffic, 73 ALR 1295.

Classification as regards counties or other political divisions permissible in statute imposing cost of construction or maintenance of highways upon property specially benefited, 77 ALR 1285.

Lump-sum assessment for taxes or public improvement against property owned by cotenants in undivided shares, 80 ALR 862.

Statute authorizing or requiring reassessment for public improvement when original assessment is invalid or void as applicable when proceedings leading to original assessment were without jurisdiction, 83 ALR 1190.

Public property as subject to special assessment for improvement, 90 ALR 1137.

Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid, 96 ALR 1275.

Diversion of traffic into business district by opening new route as special benefit for which assessment may be made, 96 ALR 1380.

Property unit for purposes of assessment for street or other local improvement as affected by owner's disregard of original lot lines or creation of new ones, 104 ALR 1049.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment, 114 ALR 399.

Personal liability of property owner to pay assessments for local improvements, 127 ALR 551; 167 ALR 1030.

Constitutionality of classification of streets as regards source of payment for improvements, 127 ALR 1090.

Applicability of statute of limitations to action to enforce special assessments as affected by question whether imposition or enforcement of the assessment is an exercise of a governmental function, 136 ALR 572.

Manner of enforcing special assessments against public property, 150 ALR 1394.

Unimproved strip or area separating property from improved portion of street as affecting assessability of property for street improvement, 166 ALR 1083.

Validity and effect of agreement by property owners or occupants to pay cost of, or assessment against property for, local improvement, 167 ALR 1030.

Power to include in special assessment interest accruing during the construction of the public improvement and running until the special assessments therefor become due, 58 ALR2d 1343.

Liability with respect to improvement assessments or charges as between vendor and purchaser, 59 ALR2d 1044.

Exclusiveness of method prescribed by statute or ordinance for enforcement of special assessment for public improvement or service, 88 ALR2d 1250.

What property "abuts" on improvement so as to be subject to assessment, 97 ALR2d 1079.

Duty as between life tenant and remainderman as respects payment of improvement assessments, 10 ALR3d 1309.

Exemption of public school property from assessments for local improvements, 15 ALR3d 847.

36-39-5. Improvements when county owns abutting property.

Whenever the abutting landowners of any street of the municipal corporation petition the governing body as set out in subsection (b) of Code Section 36-39-3 or whenever the governing body passes the resolution provided for in subsection (a) of Code Section 36-39-3 for the improvement of any street, where the county is owner of property on the street and where the governing body of the county has assented to the proposed improvement and has provided funds to pay in cash its proportionate part of the cost of the improvement, the frontage so owned shall be counted as if owned by an individual for all the purposes of this chapter. The chairman of the board of commissioners of the county is authorized to sign the petition or file objections in behalf of the county. (Ga. L. 1927, p. 321, § 13; Ga. L. 1933, § 69-425.)

RESEARCH REFERENCES

ALR. — Public property as subject to special assessment for improvement, 90 ALR 1137.

Manner of enforcing special assessments against public property, 150 ALR 1394.

36-39-6. Paving by railroad having tracks in street.

Any railroad or street railway having tracks located in a street at the time of a proposed improvement shall be required by the governing body to pave the width of its tracks and two feet on each side thereof. Such paving shall be done with the same material and in the same manner as the rest of the street to be paved, provided that the governing body may require such paving to be of a different material and manner of construction when, in its judgment, this is rendered necessary by the uses of the street by the railway. The work shall be performed under the supervision and subject to the approval of the city's municipal corporation's engineer. If the railway, within a period of 30 days after receipt of the notice to do such work, does not agree in writing to comply with such order or if the work is not completed to the satisfaction of the municipal corporation's engineer within such time as may be prescribed by the governing body, the governing body may have the work done and may charge the cost and expense thereof to the railway company. The governing body shall have a lien against the railway company for such cost and expense. Such lien shall have the same rank and priority and shall be enforced in the same manner as the liens provided for in Code Section 36-39-20. (Ga. L. 1927, p. 321, § 5; Code 1933, § 69-405; Ga. L. 1987, p. 3, § 36.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 307, 328.

C.J.S. — 64 C.J.S., Municipal Corporations, §§ 1499, 1503.

ALR. — Paving ordinance as impairment of obligation of street railway franchise, 10 ALR 897.

Liability of railroad or street railway which paves or is liable for paving occupied portion of street to assessment for improvement of remainder, 29 ALR 679.

Duty of street railway to keep street in repair as affected by change in traffic conditions, 33 ALR 131.

36-39-7. Payment for street improvements and construction of water, gas, and sewer connections; payment of costs of connections.

Whenever the petition provided for in subsection (b) of Code Section 36-39-3 is presented or when the governing body has determined to improve any street and has passed the resolution provided for in subsection (a) of Code Section 36-39-3, the governing body shall have the power to enact all such ordinances and to establish all such rules and regulations as may be necessary to require the owners of all the

property abutting on the improvement and of any railway in the street to pay the cost of such improvement and to cause to be put in and constructed all water, gas, or sewer pipe connections to connect with any existing water, gas, or sewer pipes in and underneath the streets where such improvement is to be made. All cost and expense of making water, gas, or sewer pipe connections shall be taxed solely against the property abutting on the improvement; but such cost and expense shall be included and made a part of the general assessment to cover the cost of the improvement. (Ga. L. 1927, p. 321, § 6; Code 1933, § 69-406.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 181 et seq.

C.J.S. — 39A C.J.S., Highways, § 36. 40 C.J.S., Highways, § 175.

ALR. — Construction of provision of statute, ordinance, or franchise relating to "repair" of street railway zone, 10 ALR 928.

Eligibility of public officer or employee to appointment as member of body to lay assessments for public improvement, 71 ALR 540.

Power to include in special assessment interest accruing during the construction of the public improvement and running until the special assessments therefor become due, 58 ALR2d 1343.

36-39-8. Resolution letting contract for improvements following time for protests or filing of petition.

After the expiration of the time for objection or protest on the part of the property owners, if no sufficient protest is filed, or on receipt of a petition for an improvement signed by the owners of a majority of the frontage of the land to be assessed, if the petition is found to be in proper form and properly executed, the governing body shall adopt a resolution reciting that no protest has been filed or that a petition was filed, as the case may be, and expressing the determination of the governing body to proceed with the improvement. The resolution shall state the kind of improvement, define the extent and character of the same, and specify such other matters as may be necessary to instruct the engineer employed by the municipal corporation in the performance of his or her duties in preparing for such improvement the necessary plans, plats, profiles, specifications, and estimates. The resolution shall set forth any and all such reasonable terms and conditions as the governing body deems proper to impose with reference to the letting of the contract and the provisions thereof. The governing body, by such resolution, shall provide that the contractor shall execute to the municipal corporation a good and sufficient bond, as provided in Part 3 of Article 3 of Chapter 91 of this title, and may also require a bond in an amount to be stated in the resolution for the maintenance of the good condition of the improvements for a period of not less than five years from the time of completion, in the discretion of the governing body. The resolution shall also direct the clerk of the municipal corporation to

advertise for sealed proposals for furnishing the materials and performing the work necessary in making such improvements. (Ga. L. 1927, p. 321, § 7; Code 1933, § 69-407; Ga. L. 1952, p. 310, § 1; Ga. L. 2000, p. 498, § 3; Ga. L. 2001, p. 820, § 11.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 34 et seq., 106 et seq.

C.J.S. — 40 C.J.S., Highways, §§ 188, 236. 64 C.J.S., Municipal Corporations, § 1225.

36-39-9. Work performed by municipal corporation; property owners' objections to performance of work by municipal corporation.

As an alternative to contracting for the improvement, the governing body shall have the right, at its option and in its discretion, to provide that the work necessary in making the improvement shall be done by the municipal corporation itself. In such event, the municipal corporation shall procure all materials, provide the machinery and equipment, and do all of the work necessary in making such improvement. If the governing body determines that the municipal corporation shall itself do the work necessary in making the improvement, the resolution expressing the determination of the governing body to proceed with the improvement shall so state; and such resolution shall fix a time and place at which the owners of the property affected by the proposed improvement shall have the right to file objections thereto. Notice of the resolution and of the intention of the governing body to cause the work to be done by the municipal corporation shall be published in at least six consecutive issues of a daily paper having a general circulation in the municipal corporation or once a week for two weeks in the newspaper in which the sheriff's advertisements for the county in which the municipal corporation is situated are published. The notice shall set out the time and place at which objections may be filed, which time shall be not less than ten days following the last publication of the notice. The owners of the lots or parcels of land fronting or abutting upon any street or portion thereof upon which such improvement is proposed to be made shall have the right, within the time prescribed, to file written objections to the performance of the work by the municipal corporation. In the event that the owners of a majority of the lineal frontage of the lots or parcels of land fronting or abutting upon any such street or portion thereof object to the doing of the work by the municipal corporation, the work shall be done under contract and the governing body shall proceed in the manner provided in this chapter for the letting of the work under contract. If no objections are filed by the owners of a majority of the lineal frontage of the lots or parcels of land fronting or abutting on any such street or portion thereof within the time prescribed, the municipal

corporation itself shall proceed with the doing of the work necessary in making the improvement. Where the work of making the improvement is done by the municipal corporation, the cost thereof shall include the entire cost of all materials used and labor done in the performance of the work, shall include a reasonable rental for the use of machinery, equipment, and materials used in the doing of the work, and shall also include all engineering, legal, and other expenses incurred in connection with the doing of the work or the proceedings under which the same is done. When the work of making the improvement is done by the municipal corporation, the provisions of Code Section 36-39-8 relating to the letting of a contract and the provisions of Code Sections 36-39-10 and 36-39-11 shall not apply. (Ga. L. 1927, p. 321, § 7; Code 1933, § 69-407; Ga. L. 1952, p. 310, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 34 et seq., 106 et seq.

C.J.S. — 40 C.J.S., Highways, §§ 188, 236. 64 C.J.S., Municipal Corporations, § 1223.

ALR. — What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 ALR4th 822.

36-39-10. Publication and contents of notice of contract proposals.

The notice of the proposals specified in Code Section 36-39-8 shall be published in at least six consecutive issues of a daily paper or at least two issues of a weekly paper having a general circulation in the municipal corporation. The notice shall state the street or streets to be improved, the kinds of improvements proposed, what bond or bonds will be required to be executed by the contractor, the time when and the place where the sealed proposals shall be filed, and when and where the same will be considered by the governing body. (Ga. L. 1927, p. 321, § 7; Code 1933, § 69-408.)

JUDICIAL DECISIONS

Presumption of acceptance of assessment terms. — When no objection to the assessment or prior proceedings was made by the property owner as provided in the act, and when no action was filed to enjoin the assessment or the improvement within 30 days after the passage of the ordinance making such assessment final, the property owner will be presumed to have accepted the terms thereof and to have agreed that the assessment provided for in the act may be made. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99 (1935).

Cited in Carter v. City of Toccoa, 210 Ga. 167, 78 S.E.2d 487 (1953).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 37, 38. 64 Am. Jur. 2d, Public Works and Contracts, § 52 et seq.

C.J.S. — 64 C.J.S., Municipal Corporations, § 1368 et seq.

ALR. — What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 ALR4th 822.

36-39-11. Examination of bids and award of contract; readvertisement for bids.

At the time and place specified in the notice provided for in Code Section 36-39-10, the governing body shall examine all bids received. Without unnecessary delay, the contract shall be awarded to the lowest and best bidder, who will perform the work and furnish the materials which may be selected and perform all the conditions imposed by the governing body as prescribed in the resolutions and notice for proposals. The governing body shall have the right to reject any and all bids and readvertise for other bids when the bids submitted are not, in its judgment, satisfactory. (Ga. L. 1927, p. 321, § 7; Code 1933, § 69-409.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 72 et seq.

C.J.S. — 64 C.J.S., Municipal Corporations, § 1364 et seq.

ALR. — Validity of promise based on invalid paving assessment, 20 ALR 1326.

Right of municipality to exact of contractor additional consideration as condition of extension of time for completion of improvements, 71 ALR 904.

Right of public authorities to reject all bids for public work or contract, 31 ALR2d 469.

Public contracts: authority of state or its subdivision to reject all bids, 52 ALR4th 186.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 ALR4th 93.

Encroachment of trees, shrubbery, or other vegetation across boundary line, 65 ALR4th 603.

36-39-12. Appointment of board of appraisers to appraise and apportion cost.

After the contract has been let or after the improvement has been made by the municipal corporation, in the event the governing body elects to have the work done by the municipal corporation, and after the cost for such improvement, which shall include all other expenses incurred by the municipal corporation incident to the improvement in addition to the contract price for the work and materials or in addition to the cost of all materials, labor, machinery, equipment, and services used in the making of each improvement, in the event the work is done by the municipal corporation, has been ascertained, the governing body shall, by resolution, appoint a board of appraisers, consisting of three members, to appraise and apportion the cost and expense of the same to

the several tracts of land abutting on the improvement as provided in Code Sections 36-39-4 and 36-39-6. (Ga. L. 1927, p. 321, § 8; Code 1933, § 69-410; Ga. L. 1952, p. 310, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, §§ 7, 60, 87 et seq., 113.

C.J.S. — 40 C.J.S., Highways, §§ 378, 379. 64 C.J.S., Municipal Corporations, § 1584.

36-39-13. Filing of board of appraisers' report.

Within 30 days from the date of the resolution appointing the board of appraisers, such board shall file with the clerk of the municipal corporation a written report of the appraisal and the assessment and cost upon the several lots and tracts of land abutting on such street, as well as upon the property of any street or steam railway whose tracks are located in such street where such railway has failed or refused to do the paving as provided in Code Section 36-39-6 when and as required by the governing body. (Ga. L. 1927, p. 321, § 8; Code 1933, § 69-411.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 129.

C.J.S. — 64 C.J.S., Municipal Corporations, § 1587.

36-39-14. Hearing upon board of appraisers' report; review of report and objections; ordinance fixing assessments; taxation of interest.

When the report of the appraisers has been returned and filed, the governing body shall appoint a time for the holding of a session or shall designate a regular meeting of its body for the hearing of any complaints or objections that may be made by any interested person concerning the appraisal, apportionment, and assessment. Notice of such session for the hearing shall be published by the clerk of the governing body once a week for two weeks in a newspaper having a general circulation in the municipal corporation. The notice shall provide for an inspection of the return by any property owner or other party interested in such return. The time fixed for the hearing shall be not less than five nor more than ten days from the date of the last publication of the notice. The governing body at the session shall have the power and duty to review and correct the appraisal, apportionment, and assessment, to hear objections to the same, and to confirm the same either as made by the board or as corrected by the governing body. The governing body, by ordinance, shall fix the assessment in accordance with the appraisal and apportionment, as so confirmed, against the several tracts of land liable therefor. The rate of interest to be taxed

shall not exceed 1 percent per annum over and above the rate of interest stipulated in the bonds provided for in this chapter. (Ga. L. 1927, p. 321, § 8; Code 1933, § 69-412.)

JUDICIAL DECISIONS

Presumption of acceptance of assessment terms. — When no objection to the assessment or prior proceedings was made by the property owner as provided in the act, and when no action was filed to enjoin the assessment or the improvement within 30 days after the passage of the ordinance making such assessment final, the property owner will be presumed to have accepted the terms thereof and to have agreed that the assessment provided for in the act may be made. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99 (1935).

Cited in Carter v. City of Toccoa, 210 Ga. 167, 78 S.E.2d 487 (1953).

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 135 et seq.

C.J.S. — 64 C.J.S., Municipal Corporations, §§ 1589 et seq., 1671, 1675, 1676, 1682.

ALR. — Qualification of owner of property affected by public improvement to act in making assessment, 2 ALR 1207.

Loss of right to contest assessment in proceeding for street or sewer improvement by waiver, estoppel, or the like, 9 ALR 634.

Loss of right to contest assessment in drainage proceeding by waiver, estoppel, or the like, 9 ALR 842.

Inclusion in assessment for public improvement of amount to cover delinquencies as contrary to constitutional guaranties, 40 ALR 1352; 42 ALR 1185.

Eligibility of public officer or employee to appointment as member of body to lay assessments for public improvement, 71 ALR 540.

Failure of property owner to avail himself of remedy provided by statute or ordinance as precluding attack based on improper inclusion of property in, or exclusion of property from, assessment, 100 ALR 1292.

Exclusiveness of method prescribed by statute or ordinance for enforcement of special assessment for public improvement or service, 88 ALR2d 1250.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 ALR4th 822.

36-39-15. Time and manner of payment of assessments generally.

Assessment in conformity to the appraisal and apportionment as confirmed by the municipal corporation shall be payable to the treasurer of the municipal corporation in cash. If paid within 30 days from the date of the passage of the ordinance, such assessment shall be without interest. (Ga. L. 1927, p. 321, § 8; Code 1933, § 69-413.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 168.

ALR. — Loss of right to contest assessment in proceeding for street or sewer improvement by waiver, estoppel, or the like, 9 ALR 634.

Loss of right to contest assessment in drainage proceeding by waiver, estoppel, or the like, 9 ALR 842.

Liability of municipality in consequence of its inability, refusal, or failure to collect the cost of local improvements from the property benefited, 51 ALR 973; 172 ALR 1030.

Power of municipality to transfer or assign its right to enforce assessment or lien for local improvements, 55 ALR 667.

Right of taxpayer to anticipate payment of tax or special improvement assessment or deferred installments thereof, 96 ALR 1475.

Personal liability of property owner to pay assessments for local improvements, 127 ALR 551; 167 ALR 1030.

Manner of enforcing special assessments against public property, 150 ALR 1394.

36-39-16. Payment of assessment in installments.

If the owner of the land or of any street railway assessed, within 30 days from the passage of the ordinance making the assessment final, files with the clerk of the municipal corporation his written request asking that the assessments be payable in installments in accordance with the provisions of this Code section, the same shall thereupon be and become payable in equal annual installments over such period of years, not less than two nor more than ten, as shall be fixed and prescribed by the governing body of the municipal corporation. Such installments shall bear interest at a rate not exceeding 7 percent per annum until paid. Each installment, together with the interest on the entire amount remaining unpaid, shall be payable each year at such time and place as shall be provided by resolution of the governing body. (Ga. L. 1927, p. 321, § 8; Code 1933, § 69-414; Ga. L. 1947, p. 1539, § 1; Ga. L. 1989, p. 1078, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, §§ 169, 170.

C.J.S. — 40 C.J.S., Highways, § 383 et seq. 64 C.J.S., Municipal Corporations, §§ 1737, 1742.

ALR. — Right of taxpayer to anticipate payment of tax or special improvement assessment or deferred installments thereof, 96 ALR 1475.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment, 114 ALR 399.

Personal liability of property owner to pay assessments for local improvements, 127 ALR 551; 167 ALR 1030.

Manner of enforcing special assessments against public property, 150 ALR 1394.

36-39-17. Assessments where portion of costs paid by municipal corporation.

When the municipal corporation desires to pay any portion of the cost of the improvements contemplated in this chapter in addition to the amounts otherwise provided for, the balance may be assessed against the abutting property or the owners thereof or against the owners of

any street or steam railway therein, as provided in this chapter. (Ga. L. 1927, p. 321, § 15; Code 1933, § 69-427.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 90.

C.J.S. — 64 C.J.S., Municipal Corporations, §§ 1517, 1520, 1521.

36-39-18. Additional assessments.

If any assessment is found to be invalid or insufficient in whole or in part for any reason whatsoever, the governing body may at any time, in the manner provided for the making of an original assessment, proceed to cause a new assessment to be made and fixed. The new assessment shall have the same force and effect as an original assessment. (Ga. L. 1927, p. 321, § 12; Code 1933, § 69-415.)

JUDICIAL DECISIONS

Cited in City of La Grange v. Pound, 50 Ga. App. 219, 177 S.E. 762 (1934).

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 131 et seq.

C.J.S. — 40 C.J.S., Highways, § 382. 64 C.J.S., Municipal Corporations, §§ 1704 et seq., 1725.

ALR. — Inclusion in assessment for public improvement of amount to cover delinquencies as contrary to constitutional guaranties, 42 ALR 1185.

Necessity that additional assessment in proceeding for local improvement precede incurring liability in excess of the original assessment, 63 ALR 1179.

Personal liability of property owner to pay assessments for local improvements, 127 ALR 551; 167 ALR 1030.

Manner of enforcing special assessments against public property, 150 ALR 1394.

36-39-19. Publication and contents of notice of due date of assessment; effect of failure to publish notice.

It shall be the duty of the treasurer, not less than 30 days and not more than 50 days before the maturity of any installment of the assessments, to publish at least one time, in a newspaper having a general circulation in the municipal corporation, a notice advising the owner of the property affected by the assessment of the date when such installment and interest will be due, designating the street or streets or other public places for the improvement of which such assessments have been levied and stating that, unless the installment and interest are promptly paid, proceedings will be taken to collect such installment and interest. In lieu of the publication, the treasurer may mail the notice within the time limits aforesaid to the owners of record of the

property affected, at their last known address. The failure of the treasurer or clerk to publish or mail the notice of maturity of any installment of the assessment and interest shall in no wise affect the validity of the assessment and interest and the execution issued therefor. (Ga. L. 1927, p. 321, § 11; Code 1933, § 69-420.)

RESEARCH REFERENCES

ALR. — Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid, 96 ALR 1275.

Personal liability of property owner to pay assessments for local improvements, 127 ALR 551; 167 ALR 1030.

Manner of enforcing special assessments against public property, 150 ALR 1394.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 ALR4th 822.

36-39-20. Lien for assessment and interest.

The assessment and each installment thereof, along with the interest thereon and the expense of collection, are declared to be a lien against the lots and tracts of land so assessed, from the date of the ordinance levying the same, coequal with the lien of other taxes and prior to and superior to all other liens against such lots or tracts. Such lien shall continue until the assessment and the interest thereon are fully paid and shall be enforced in the same manner as are liens for municipal corporation taxes. (Ga. L. 1927, p. 321, § 9; Code 1933, § 69-416.)

JUDICIAL DECISIONS

Priority of lien coequal with tax lien. Paulk v. City of Ocilla, 188 Ga. 69, 2 S.E.2d 642 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, §§ 171, 172 et seq., 226.

C.J.S. — 40 C.J.S., Highways, § 383 et seq. 64 C.J.S., Municipal Corporations, §§ 1726, 1734, 1742.

ALR. — Priority as between lien of taxes and lien of special assessments, 65 ALR 1379.

Assessment for local improvements as taxes within statute providing for payment of taxes out of proceeds of judicial sale, 73 ALR 1227.

Priority as between liens for public improvements, 99 ALR 1478.

Action by municipality to enforce lien for special assessment as within statute of limitations not specifically covering it, 103 ALR 885.

Constitutionality of statute giving to lien for alteration of property pursuant to public requirement, mechanics' lien or similar lien, preference over preexisting mortgage or other lien, 121 ALR 616; 141 ALR 66.

Personal liability of property owner to pay assessments for local improvements, 127 ALR 551; 167 ALR 1030.

Applicability of statute of limitations to action to enforce special assessments as

affected by question whether imposition or enforcement of the assessment is an exercise of a governmental function, 136 ALR 572.

Manner of enforcing special assessments against public property, 150 ALR 1394.

Easement, servitude, or restrictive covenant as affected by enforcement of assessment or improvement liens, 26 ALR2d 873.

36-39-21. Execution, levy, and sale on unpaid assessments or interest generally.

It shall be the duty of the treasurer, within 15 days after the date of the maturity of any installment of assessment or interest, to issue an execution against the lot or tract of land assessed for the improvement or against the party or person owning the same for the amount of the assessment or interest. The treasurer shall turn over the same to the marshal or chief of police of the municipal corporation or his deputy, who shall levy the same upon the abutting real estate liable for the assessment and previously assessed for the improvements. After advertisement and other proceedings as in case of sales for city taxes, the real estate shall be sold at public outcry to the highest bidder. Such sales shall vest an absolute title in the purchaser, subject to the lien of the remaining unpaid installments with interest and also subject to the right of redemption as provided in Article 3 of Chapter 4 of Title 48. (Ga. L. 1927, p. 321, § 11; Code 1933, § 69-421.)

Cross references. — Executions to enforce collection of amounts due municipality for paving streets or alleys, or laying sewers and drains, § 48-5-358.

JUDICIAL DECISIONS

Cited in City of Waycross v. Cullens, 190 Ga. 823, 10 S.E.2d 920 (1940).

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, §§ 181, 182, 188 et seq.

C.J.S. — 40 C.J.S., Highways, § 383 et seq. 64 C.J.S., Municipal Corporations, §§ 1772, 1773. 82 C.J.S., Statutes, § 395 et seq.

ALR. — Character of action or proceeding in which purchaser at invalid sale for taxes or local improvement assessment may secure reimbursement from owner; and provisions of decree or judgment as to relief, 86 ALR 1208.

Personal liability of property owner to pay assessments for local improvements, 127 ALR 551; 167 ALR 1030.

Right of mortgagor or purchaser of equity of redemption to defeat lien of mortgage by acquisition of title at sale subsequent to mortgage for nonpayment of taxes, or of assessment for local improvement, 134 ALR 289.

Manner of enforcing special assessments against public property, 150 ALR 1394.

Exclusiveness of method prescribed by

statute or ordinance for enforcement of special assessment for public improvement or service, 88 ALR2d 1250.

36-39-22. Affidavit contesting amount of execution; trial by superior court; penalties for delay.

The defendant shall have the right to file an affidavit denying that the whole or any part of the amount for which the execution issued is due and stating what amount he admits to be due, which amount so admitted to be due shall be paid and collected before the affidavit is received and the affidavit shall be received for the balance. All affidavits, including those filed by railroads or street railways against whom execution is issued for the cost and expense of paving, shall set out in detail the reasons why the affiant claims the amount is not due. When received by the municipal marshal or chief of police, such affidavits shall be returned to the superior court of the county wherein the municipal corporation is located. They shall be tried and the issue shall be determined as in cases of illegality, subject to all the pains and penalties provided for in other cases of illegality for delay under the laws of this state. (Ga. L. 1927, p. 321, § 11; Code 1933, § 69-423.)

JUDICIAL DECISIONS

General rule is that all presumptions are in favor of validity of assessments for local improvements, and while these presumptions are not conclusive, the burden is on the party attacking the validity of an assessment to show that the assessment is invalid. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99 (1935).

Burden of proof upon plaintiff. — On the trial of an illegality interposed to an execution levied on abutting real estate for an unpaid paving assessment, the burden is upon the plaintiff in execution to make out a prima facie case, and this is done by putting in evidence an execution fair on the execution's face and a legal levy entered thereon. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99 (1935).

Cited in City of La Grange v. Pound, 50 Ga. App. 219, 177 S.E. 762 (1934).

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 205 et seq.

C.J.S. — 40 C.J.S., Highways, § 383 et seq. 64 C.J.S., Municipal Corporations, §§ 1682, 1699.

ALR. — Personal liability of property owner to pay assessments for local improvements, 127 ALR 551; 167 ALR 1030.

Manner of enforcing special assessments against public property, 150 ALR 1394.

36-39-23. Collection and use of assessments generally; special fund; treasurer's bond.

The assessment provided for and levied under this chapter shall be payable as the several installments become due, together with the

interest thereon, to the treasurer of the municipal corporation, who shall keep an accurate account of all such collections made by him. Such collections shall be kept in a special fund, to be used and applied for the payment of the bonds and the interest thereon and the expenses incurred incident thereto and for no other purpose until all the bonds are paid in full. The treasurer shall give bond in an amount to be fixed by the governing body, conditioned upon the faithful performance by him of the duties imposed in this chapter. (Ga. L. 1927, p. 321, § 11; Code 1933, § 69-422.)

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 375. 64A C.J.S., Municipal Corporations, § 2091 et seq.

ALR. — Personal liability of property owner to pay assessments for local improvements, 127 ALR 551; 167 ALR 1030.

Applicability of statute of limitations to action to enforce special assessments as affected by question whether imposition or enforcement of the assessment is an exercise of a governmental function, 136 ALR 572.

Manner of enforcing special assessments against public property, 150 ALR 1394.

36-39-24. Limitation period for contesting or enjoining assessments.

No action shall be sustained (1) to set aside any assessment, (2) to enjoin the governing body from making, fixing, or collecting the assessment or issuing or levying executions therefor or issuing bonds or providing for their payment, or (3) contesting the validity thereof on any grounds or for any reason other than the failure of the governing body to adopt and publish the preliminary resolution provided for in Code Section 36-39-3 in cases requiring such resolution and its publication or to give notice of the hearing of the return of the appraisers as provided for in Code Section 36-39-14, unless such action is commenced within 30 days after the passage of the ordinance making the assessment final. (Ga. L. 1927, p. 321, § 12; Code 1933, § 69-424.)

JUDICIAL DECISIONS

General rule is that all presumptions are in favor of validity of assessments for local improvements, and while these presumptions are not conclusive, the burden is on the party attacking the validity of an assessment to show that the assessment is invalid. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99 (1935).

Presumption of acceptance of assessment terms. — When no objection to the assessment or prior proceedings was made by the property owner as provided in the act, and when no action was filed to enjoin the assessment or the improvement within 30 days after the passage of the ordinance making such assessment final, the property owner will be presumed to have accepted the terms thereof and to have agreed that the assessment provided for in the act may be made. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99 (1935).

Cited in City of La Grange v. Pound, 50

Ga. App. 219, 177 S.E. 762 (1934); Carter v. City of Toccoa, 210 Ga. 167, 78 S.E.2d 487 (1953).

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 205 et seq.

C.J.S. — 40 C.J.S., Highways, § 380. 64 C.J.S., Municipal Corporations, §§ 1652, 1653, 1673.

ALR. — Validity of promise based on invalid paving assessment, 20 ALR 1326.

Right to enjoin enforcement of illegal tax, local assessment, or license fee, upon joinder of several affected thereby, 32 ALR 1266; 156 ALR 319.

Personal liability of property owner to pay assessments for local improvements, 127 ALR 551; 167 ALR 1030.

Manner of enforcing special assessments against public property, 150 ALR 1394.

36-39-25. Issuance of bonds; payment; interest; terms; form.

The governing body, after the expiration of 30 days from the passage of the ordinance confirming and levying the assessment, shall, by resolution, provide for the issuance of bonds in the aggregate amount of the assessments remaining unpaid, bearing date not more than 30 days after the passage of the ordinance fixing the assessment and of such denomination as the governing body shall determine. Such bond or bonds, unless authority is thereafter granted and exercised for making them direct obligations of the municipal corporation, shall in no event become a liability of the municipal corporation or of the governing body of the municipal corporation issuing them. The bonds shall be payable in equal annual installments over the same period of years, not less than two nor more than ten, as has been fixed and provided by the governing body of the municipal corporation for the payment of the assessments in installments under Code Section 36-39-16. One installment of any such series of bonds, with interest upon the whole series to date, shall be payable on such day and at such place as may be determined by the governing body, and one installment thereof with the yearly interest upon the whole amount remaining unpaid shall be payable on the same day in each succeeding year, until all are paid. Such bonds shall bear interest at a rate not exceeding 10 percent per annum from their date until maturity, payable annually. They shall be designated as "street-improvement bonds" and on the face thereof shall recite the street or streets, the part of the street or streets, or other public places for the improvement of which they have been issued. Unless authority is thereafter granted and exercised for making them direct obligations of the municipal corporation, such bonds shall be payable solely from assessments which have been fixed upon the lots or tracts of land benefited by the improvement under authority of this chapter. The bonds shall be signed by the mayor or chairman of the board of commissioners and attested by the clerk of the governing body,

shall have the impression of the corporate seal of the municipal corporation thereon, and shall have interest coupons attached. All bonds issued by authority of this chapter shall be payable at such place either within or outside this state as shall be designated by the governing body. (Ga. L. 1927, p. 321, § 10; Code 1933, § 69-417; Ga. L. 1947, p. 1539, § 2; Ga. L. 1989, p. 1078, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Street improvement bonds issued pursuant to statutory scheme contained in this chapter are not obligations of surplus of a bank as being obligation of any one obligor. 1952-53 Op. Att'y Gen. p. 7 (see O.C.G.A. Ch. 39, T. 36).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 72. 70C Am. Jur. 2d, Special or Local Assessments, § 168.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2118 et seq.

ALR. — Assignment and transfer of government bonds, 22 ALR 775.

Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 ALR 1109.

Constitutional provision against impairing obligation of contract as applicable to statutes affecting rights or remedies of holders or owners of improvement bonds or liens, 97 ALR 911.

Priority as between successive issues of obligations of permanently organized local improvement district, 99 ALR 1488.

Liability of municipality in consequence of its inability, refusal, or failure to collect the cost of local improvements from the property benefited, 172 ALR 1030.

36-39-26. Sale of bonds; delivery to contractors.

The bonds shall be sold by the governing body at not less than par and the proceeds thereof shall be applied to the payment of the contract price and other expenses incurred pursuant to this chapter. Alternatively, such bonds in the amount that is necessary for the purpose may be turned over and delivered to the contractor at par value in payment of the amount due him on his contract, and the portion thereof which is necessary to pay other expenses incident to and incurred in providing for the improvements shall be sold or otherwise disposed of as the governing body directs. (Ga. L. 1927, p. 321, § 10; Code 1933, § 69-418.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 178 et seq., 188.

ALR. — Priority as between successive issues of obligations of permanently organized local improvement district, 99 ALR 1488.

36-39-27. Disposition of proceeds from bonds remaining after payment.

Any proceeds from the sale of the bonds remaining in the hands of the treasurer after the payment provided for in Code Section 36-39-26 shall go into the treasury of the municipal corporation as compensation for the services to be rendered by it as contemplated in this chapter. (Ga. L. 1927, p. 321, § 10; Code 1933, § 69-419.)

36-39-28. Petition for validation of ordinance establishing assessments; time; contents.

At any time within 60 days after the assessments are finally determined and fixed, the municipal corporation may file a petition in the superior court of the county in which the municipal corporation is situated, along with a copy of the ordinance, in which petition shall be alleged the fact of the passage and approval of the ordinance, the street or part of a street affected thereby, the character of paving or other improvement intended, and the approximate estimate of the cost. The petition shall allege that the ordinance is authorized by law and that it will create a lien on all real property abutting on such street or part of a street for the payment by the owner of each lot or parcel of land so abutting of the pro rata share of expense assessed to each lot or parcel of land, as well as on any street or other railroad therein, if any such there are, and shall pray for a judgment by the court declaring the ordinance valid, legal, and binding and that the liens be set up as alleged. It shall not be necessary in such petition to allege the names of the owners of the abutting property or railroads to be affected, but it shall be sufficient to describe the street or portion thereof to be improved and to indicate that the property on the street is to be charged with the expense. (Ga. L. 1927, p. 321, § 16; Code 1933, § 69-428.)

JUDICIAL DECISIONS

Cited in Carter v. City of Toccoa, 210 Ga. 167, 78 S.E.2d 487 (1953).

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, §§ 172, 175.

C.J.S. — 64 C.J.S., Municipal Corporations, §§ 1526, 1726 et seq.

36-39-29. Order to show cause on petition; time and notice of hearing.

At or before the filing of the petition provided for in Code Section 36-39-28, the same shall be presented to the judge of the superior court,

who shall thereupon enter an order calling upon all persons owning or interested in the real estate abutting on the street or on the designated part thereof to show cause, at a time and place to be named in the order, why the prayer of the petition should not be granted, the ordinance and assessments not declared valid, and the liens not be fixed as legal and binding. The hearing shall be not less than 30 nor more than 60 days after the entry of the order and shall be either in open court or at chambers. It shall be the duty of the clerk to publish once a week for four weeks, in the official newspaper of the county, a statement of the case and a copy of the order. (Ga. L. 1927, p. 321, § 16; Code 1933, § 69-429.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Motions, Rules, and Orders, § 46.

C.J.S. — 64 C.J.S., Municipal Corporations, § 1728.

36-39-30. Conduct of hearing; issuance of order by court.

At the time and place named or at such other time and place as the hearing may be adjourned to, any interested person shall be heard to show cause in writing, which writing shall be filed with the clerk, why the prayer of the petition should not be granted. The court shall hear all questions of law or fact and all competent evidence may be offered as in other cases. The court shall thereupon enter an appropriate order finding and adjudging that the ordinance is lawful and valid and that the liens are legal and binding, or otherwise, as the law and facts may warrant. (Ga. L. 1927, p. 321, § 16; Code 1933, § 69-430.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Motions, Rules, and Orders, § 46.

36-39-31. Appeal from judgment of court.

The municipal corporation or any person appearing who is dissatisfied with the judgment may appeal to the Court of Appeals, as provided in Title 5. (Ga. L. 1927, p. 321, § 16; Code 1933, § 69-431.)

36-39-32. Conclusiveness of superior court's final judgment.

If the final judgment of the superior court is in favor of the validity of the ordinance and of the liens claimed, the same shall forever be conclusive, and the matters so determined shall never thereafter be drawn in question in any court. (Ga. L. 1927, p. 321, § 16; Code 1933, § 69-432.)

36-39-33. Entry of reference to judgment on bonds following validation; use of entry as evidence.

Bonds issued under this chapter after the judgment of the superior court shall have written or stamped thereon the words "Validated and confirmed by judgment of the superior court," specifying also the date when the judgment was rendered and the court in which it was rendered and shall be signed by the clerk of the superior court. Such entry shall be original prima-facie evidence of the fact of the judgment and shall be receivable as such in any court of this state. (Ga. L. 1927, p. 321, § 16; Code 1933, § 69-433.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 294 et seq.

36-39-34. Construction of chapter.

This chapter shall not be construed to repeal any special or local law or to affect any proceedings under such law for the making of improvements authorized in this chapter or for raising the funds therefor but shall be deemed to be additional and independent legislation for such purposes, to provide an alternative method of procedure for such purposes, and to be a complete law not subject to any limitations or restrictions contained in any other public or private law or laws except as otherwise provided in this chapter. (Ga. L. 1927, p. 321, § 14; Code 1933, § 69-426.)

JUDICIAL DECISIONS

Constitutionality. — This section is not violative of Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Wheat v. City of Bainbridge, 168 Ga. 479, 148 S.E. 332 (1928) (see O.C.G.A. § 36-39-34).

CHAPTER 40

GRANTS OF STATE FUNDS TO MUNICIPAL CORPORATIONS

Article 1

General Provisions

Sec.
36-40-1. Grants for repairs on facilities of historical value.

Article 2

Grants for Public Purposes

36-40-20. Legislative intent.
36-40-21. "Municipal corporation" defined.
36-40-22. Certificate of eligibility for grant generally; submission; form; execution and attestation; penalty for signing false certificate.
36-40-23. When certificate to be filed; effect of failure to file certificate.
36-40-24. Computation of allocation of funds.
36-40-25. Payment and use of funds.

Article 3

Grants for Purchase and Construction of Capital Outlay Items

Sec.
36-40-40. "Municipal corporation" defined.
36-40-41.. Grants of state funds for capital outlay items generally.
36-40-42. Certificate of eligibility for grant; submission; form; execution and attestation; penalty for signing false certificate.
36-40-43. When certificate to be filed; effect of failure to file certificate.
36-40-44. Computation of allocation of funds.
36-40-45. Payment and use of funds.
36-40-46. Submission of annual audit; adjustment of fund distribution; effect of failure to submit audit; procedure when municipal corporation has no annual audit.

ARTICLE 1

GENERAL PROVISIONS

36-40-1. Grants for repairs on facilities of historical value.

(a) In addition to any grant to which any municipal corporation of this state is entitled under Article 2 of this chapter in any fiscal year, and any other law to the contrary notwithstanding, any such municipal corporation which owns and maintains from local revenues a public facility which is found and declared by a resolution of the General Assembly to be of historical value to the state and which is in need of repairs which are reasonably estimated to cost in excess of $5 million and to require more than one year to plan and complete shall be authorized to receive an annual grant equal to one-fourth of the amount of local funds expended on or committed to such repairs by the governing body of such municipal corporation. The funds appropriated by the General Assembly for the purposes of this Code section shall be appropriated separately from funds appropriated for the purposes of Code Section 36-40-24.

(b) Funds made available under subsection (a) of this Code section shall be distributed in the same manner as other funds are distributed under Article 2 of this chapter. The certificate required by Code Section 36-40-22 shall include a statement of the amount of the annual grant under subsection (a) of this Code section, the total amount of local funds expended on or committed to the repairs specified in subsection (a) of this Code section as of the date of the certificate, and the total amount of grant funds under subsection (a) of this Code section already distributed to the municipal corporation under Article 2 of this chapter.

(c) No municipal corporation shall receive any grant under this Code section for a facility which was not found and declared eligible under subsection (a) of this Code section by April 24, 1977. (Ga. L. 1975, p. 1006, §§ 1, 3, 3A; Ga. L. 1982, p. 3, § 36.)

Cross references. — Powers and duties of Department of Natural Resources relating to historic preservation, promotion, § 12-3-50 et seq.

ARTICLE 2

GRANTS FOR PUBLIC PURPOSES

36-40-20. Legislative intent.

It is declared to be the purpose and intent of the General Assembly that state funds be made available to the governing bodies of certain municipal corporations of this state to be expended for any public purposes, except for the purpose of paying the salaries of elected municipal corporation officers. (Ga. L. 1967, p. 889, § 1.)

JUDICIAL DECISIONS

Cited in Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Office of Treasury and Fiscal Services must make two fund computations during census years. — Only manner in which the State Treasurer (now director of the Office of Treasury and Fiscal Services) can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960 decennial United States census; after the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the State Treasurer (now director of the Office of

Treasury and Fiscal Services) should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

Municipalities may use funds granted for any public purpose other than paying salaries of elected municipal officers. 1970 Op. Att'y Gen. No. 70-171.

36-40-21. "Municipal corporation" defined.

As used in this article, the term "municipal corporation" means a municipal corporation whose population shall be based on the current United States decennial census of 1980 or any future such census, the governing body of which has held at least six regular meetings within the 12 months preceding the execution of the certificate required by Code Section 36-40-22 and which for a period of one year has levied and collected an ad valorem tax on the real property in such municipal corporation or which has, for such one-year period, performed at least two of the following municipal activities and services:

(1) Furnished water service;

(2) Furnished sewerage service;

(3) Furnished garbage collection;

(4) Furnished police protection;

(5) Furnished fire protection;

(6) Assessed and collected business licenses; or

(7) Furnished municipal street-lighting facilities. (Ga. L. 1967, p. 889, § 3.)

JUDICIAL DECISIONS

Cited in Mayor of Hapeville v. Anderson, 246 Ga. 786, 272 S.E.2d 713 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Municipality must have been incorporated and listed in United States decennial census in order to qualify for municipal grant. 1967 Op. Att'y Gen. No. 67-353.

Office of Treasury and Fiscal Services must make two fund computations during census year. — Only manner in which the State Treasurer (now director of the Office of Treasury and Fiscal Services) can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960 decennial United States census. After the 1970 decennial United States census becomes

effective for the purpose of affecting Georgia law (December 31, 1970), the State Treasurer (now director of the Office of Treasury and Fiscal Services) should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 1, 13, 96.

C.J.S. — 62 C.J.S., Municipal Corporations, § 1 et seq.

36-40-22. Certificate of eligibility for grant generally; submission; form; execution and attestation; penalty for signing false certificate.

(a) Each municipal corporation, as defined in Code Section 36-40-21, shall submit to the Office of the State Treasurer a certificate showing the number of regular meetings held within the preceding 12 months by the governing body of the municipal corporation and stating that ad valorem taxes on real property were levied and collected in such municipal corporation within the 12 months preceding such certificate or stating that the municipal corporation performed at least two of the activities and services enumerated in Code Section 36-40-21.

(b) Such certificate shall be substantially in the following form:

CERTIFICATE

"The undersigned, Mayor (Chairman of the Commission) of (Official Corporate Name), does hereby certify that ____ regular meetings of the governing body were held during the past 12 months and that ad valorem taxes were levied and collected during the past 12 months for the operation of the government of (Official Corporate Name) or that the municipal corporation performed the following two services:

_____ and

_____.

The municipal treasurer or other official or officials authorized to receive municipal funds is (are)

_____.

_____ _____

Date Mayor (Chairman of Commission)

Attest:

_____

Clerk"

(c) Such certificate shall be executed by the highest elective official, whether designated as mayor or by some other term (or as chairman of

the commission in those municipal corporations having a commission form of government), and shall be attested by the clerk. The name of the municipal corporation used in the certificate shall be its official corporate name. The name of the municipal treasurer or other official or officials authorized to receive municipal funds shall be listed in the certificate and the instrument transferring funds to the municipal corporation shall be payable to such treasurer or other official or officials as listed in the certificate.

(d) The information contained in the certificate shall constitute the basis upon which the Office of the State Treasurer shall make the distribution of funds under this article.

(e) Any person willfully and knowingly signing a certificate containing false information shall be guilty of a misdemeanor. (Ga. L. 1967, p. 889, § 4; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" near the beginning of subsection (a) and in the middle of subsection (d).

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

State treasurer must make two fund computations during census year. — Only manner in which the state treasurer can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960 decennial United States census. After the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the state treasurer should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 522 et seq.

36-40-23. When certificate to be filed; effect of failure to file certificate.

Prior to June 1 of each year, a certificate shall be filed which shall be the basis upon which payments shall be made of funds made available under this article for the immediately succeeding fiscal year beginning July 1 and ending June 30. If no certificate is filed within such time limitation in this Code section, the municipality shall not be entitled to

and shall not be paid any funds for the applicable period and such municipality shall not be included in the formula for determining the amount of the grants as provided in Code Section 36-40-24. (Ga. L. 1967, p. 889, § 5.)

Editor's notes. — Ga. L. 1967, p. 889, § 5, the basis for this Code section, was amended by Ga. L. 1982, p. 869, § 1, (effective April 13, 1982), which added a new paragraph to the end of that section of the 1967 Act, providing for the filing of a late certification by any eligible municipality which failed to file for Fiscal Year 1982 funds or which filed after the June 1 cutoff date. Section 2 of the 1982 Act provided for the repeal of the 1982 Act effective November 1, 1982.

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Office of Treasury and Fiscal Services must make two fund computations during census year. — Only manner in which the State Treasurer (now director of the Office of Treasury and Fiscal Services) can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960 decennial United States census. After the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the State Treasurer (now director of the Office of Treasury and Fiscal Services) should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

36-40-24. Computation of allocation of funds.

(a) To the extent that funds are made available by any law, for the purposes set out in Code Section 36-40-20, the Office of the State Treasurer is authorized and directed to grant such funds to the municipal corporations of this state, as defined in Code Section 36-40-21, on the following basis:

(1) The total amount of the grant shall be divided by the total population of all municipal corporations, to arrive at an average per capita amount. Such per capita amount shall be multiplied in turn by the population of each municipal corporation with a population of 10,000 or less to arrive at the respective grants of such municipal corporations. Such grants shall be referred to as "paragraph (1) grants."

(2) In addition to the amount it would receive under paragraph (1) grants, each municipal corporation with a population under 5,000 shall receive an additional grant equal to 50 percent of the amount it received as a paragraph (1) grant. Such grants shall be referred to as "paragraph (2) grants."

(3) In addition to the amount it would receive under paragraph (1) grants, each municipal corporation with a population of not less than 5,000 and not more than 10,000 shall receive an additional grant equal to 25 percent of the amount it received as paragraph (1) grants. Such grants shall be referred to as "paragraph (3) grants."

(4) The amount remaining for distribution after deducting the total amounts of paragraph (1) grants, paragraph (2) grants, and paragraph (3) grants shall then be divided by the total population of all remaining municipal corporations (eliminating those receiving paragraph (1), paragraph (2), and paragraph (3) grants), to arrive at a per capita amount for such remaining municipal corporations. The per capita amount as so determined shall then be multiplied by the population of each such remaining municipal corporation to arrive at its respective grant. Such grants shall be referred to as "paragraph (4) grants."

(b) No municipal corporation which qualifies for state grants under this article shall receive less than $500.00 per annum.

(c) Whenever the term "population" is used in this article, it means population as determined according to the United States decennial census of 1980 or any future such census.

(d) The computation of individual municipal grants as called for in this article shall be prepared and certified by the Office of the State Treasurer, which shall make payments as called for in this Code section. (Ga. L. 1967, p. 889, § 2; Ga. L. 1982, p. 3, § 36; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the middle of the first sentence of subsection (a) and in the middle of subsection (d).

JUDICIAL DECISIONS

Cited in Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Minimum amount to be received. — Municipality which was not eligible under the 1960 United States census, but which is eligible under the 1970 United States census, should receive at least $250.00 regardless of the application of the formula. 1970 Op. Att'y Gen. No. 70-62.

State treasurer must make two fund computations during census

year. — Only manner in which the state treasurer can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960 decennial United States census. After the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the state treasurer should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

36-40-25. Payment and use of funds.

Funds distributed under this article shall be paid to the municipal corporation in the name of the municipal treasurer or other official or officials authorized to receive municipal funds, as listed in the certificate required by Code Section 36-40-22. Funds granted under Code Section 36-40-24 shall be expended by the municipal corporation only for the purposes prescribed in Code Section 36-40-20. (Ga. L. 1967, p. 889, § 6; Ga. L. 1975, p. 1006, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Office of Treasury and Fiscal Services must make two fund computations during census year. — Only manner in which the State Treasurer (now director of the Office of Treasury and Fiscal Services) can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960 decennial United States census. After the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the State Treasurer (now director of the Office of Treasury and Fiscal Services) should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 390 et seq.

ARTICLE 3

GRANTS FOR PURCHASE AND CONSTRUCTION OF CAPITAL OUTLAY ITEMS

36-40-40. "Municipal corporation" defined.

The term "municipal corporation," as used in this article, means a municipal corporation, the population of which is based on the current United States decennial census, the governing body of which has held at least six regular meetings within the 12 months preceding the execution of the certificate required by Code Section 36-40-42, and which has levied taxes or levied fees of any type for the operation of the government of the municipal corporation or which has received a franchise tax from any utility, firm, or corporation within the 12 months preceding the execution of the certificate required by Code Section 36-40-42. (Ga. L. 1965, p. 458, § 3.)

JUDICIAL DECISIONS

Cited in Mayor of Hapeville v. Anderson, 246 Ga. 786, 272 S.E.2d 713 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Reference in this section to "the current United States decennial census" is a reference to the population of an otherwise qualifying incorporated municipality based on the population of that municipality as it existed at the last decennial census in 1960. 1968 Op. Att'y Gen. No. 68-210 (see O.C.G.A. § 36-40-40).

Municipality must have been incorporated and listed in United States decennial census in order to qualify for a municipal grant. 1967 Op. Att'y Gen. No. 67-353.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 1, 13.

C.J.S. — 62 C.J.S., Municipal Corporations, § 1 et seq.

36-40-41. Grants of state funds for capital outlay items generally.

Pursuant to Article VII, Section III, Paragraph III of the Constitution of Georgia, relating to the granting of state funds to municipal corporations, such funds are authorized to be granted to certain municipal corporations as provided for in this article and may be used by such municipal corporations for purchasing, constructing, improving, maintaining, and repairing capital outlay items. Any funds granted to municipal corporations pursuant to the aforesaid provision of the

Constitution shall be used only for the purposes provided for in this Code section. (Ga. L. 1965, p. 458, § 1; Ga. L. 1967, p. 882, § 1; Ga. L. 1983, p. 3, § 57.)

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent. — General Assembly by this section intended to aid qualifying municipalities to fulfill the municipalities' responsibility to provide a system of roads and streets and to aid the municipalities in providing traffic control. 1965-66 Op. Att'y Gen. No. 65-40 (see O.C.G.A. § 36-40-41).

Construction of section. — This section should be strictly construed, but construed in pari materia with prior acts and amendments authorizing grants to municipalities. 1965-66 Op. Att'y Gen. No. 65-40 (see O.C.G.A. § 36-40-41).

Funds received by municipalities under this section must be used for "devices and equipment" which have as their primary function direct control of traffic or else provide a direct accommodation to the general flow of traffic. 1965-66 Op. Att'y Gen. No. 65-40 (see O.C.G.A. § 36-40-41).

Municipalities may expend funds granted under this section only for purchase, construction, improvement, maintenance, and repair of capital outlay items. 1970 Op. Att'y Gen. No. 70-171 (see O.C.G.A. § 36-40-41).

Determining what are traffic control devices. — General Assembly by the language of this section intended to confer upon the municipalities qualifying under this section some latitude in determining what are "traffic control devices and equipment to control and accommodate the flow of traffic"; however, such latitude is not completely discretionary without limitations. 1965-66 Op. Att'y Gen. No. 65-40 (see O.C.G.A. § 36-40-41).

What are activities incident to providing road system. — To construct and maintain a system of public roads, streets, sidewalks, bridges and appurtenances, and to provide traffic control devices and equipment to control and accommodate the flow of traffic therein would be "activities incident to providing and maintaining an adequate system of public roads and bridges in this State" under the provisions of Ga. Const. 1976, Art. III, Sec. X, Para. VII(b) (see Ga. Const. 1983, Art. III, Sec. IX, Para VI(b)). This section declares the same within its latitude. 1965-66 Op. Att'y Gen. No. 65-40 (see O.C.G.A. § 36-40-41).

Term "capital outlay items," as used in this law, would include any expenditure on behalf of municipalities for long-term additions or betterments properly chargeable to a capital asset account. 1970 Op. Att'y Gen. No. 70-171 (see O.C.G.A. § 36-40-41).

Investment not restricted. — General Assembly intended funds granted to municipalities to be special funds and did not intend to restrict the funds so as to prohibit the funds' temporary investment so long as the investment does not interfere in any way with the expedient use of the funds for the purpose provided in the act, and the maturity date of the government obligations does not extend beyond the date when such funds shall be needed for these purposes. 1965-66 Op. Att'y Gen. No. 65-35.

Use of word "shall" permissive as to question of temporary investment of funds. — Limitation imposed by this section authorizing grants was intended by the legislature to be a limitation on the final use of these funds and the word "shall" as used in the section should be interpreted as permissive or directory when the question of temporary investment of these funds is considered. Certainly no right or benefit is lost by taking this interpretation; but to the contrary, the benefit of capital earnings is lost if this interpretation is not taken. 1965-66 Op. Att'y Gen. No. 65-35 (see O.C.G.A. § 36-40-41).

Legitimacy of expenses for street lights. — When street lights are installed or rented primarily to directly control or accommodate the general flow of traffic, the expenses for such installation or rental would be legitimate expenses un-

der this section. However, when street lights are installed or rented as a general city improvement or as a measure to control crime, expenses of installation or renting would not be qualified expenditures. 1965-66 Op. Att'y Gen. No. 65-40 (see O.C.G.A. § 36-40-41).

Street name sign expenses not legitimate. — As the usual and general purpose for street name signs is to facilitate individuals in gaining directions and is not, strictly speaking, a measure directed at controlling or accommodating the general flow of traffic, street name signs are not a legitimate expenditure under this section. 1965-66 Op. Att'y Gen. No. 65-40 (see O.C.G.A. § 36-40-41).

Bush hog mower expenses not legitimate. — Since bush hog mowers for rights of way and litter barrels do not have as a primary function the direct control or accommodation of the flow of traffic, although mowers and barrels may indirectly, or as an auxiliary purpose, facilitate the flow of traffic, the mowers and barrels would not be qualified expenditures within the strict construction of this section. 1965-66 Op. Att'y Gen. No. 65-40 (see O.C.G.A. § 36-40-41).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 108, 470 et seq.

C.J.S. — 81A C.J.S., States, § 390 et seq.

36-40-42. Certificate of eligibility for grant; submission; form; execution and attestation; penalty for signing false certificate.

(a) Each municipal corporation, as defined in Code Section 36-40-40, shall submit to the Office of the State Treasurer a certificate showing the number of regular meetings held within the preceding 12 months by the governing body of the municipal corporation and stating that taxes or fees were levied within the 12 months preceding the execution of such certificate for the operation of the municipal government.

(b) The certificate shall be substantially in the following form:

CERTIFICATE

"The undersigned, Mayor (Chairman of the Commission) of (Official Corporate Name), does hereby certify that _____ regular meetings of the governing body were held during the past 12 months and that taxes or fees were levied during the past 12 months for the operation of the government of (Official Corporate Name). The municipal treasurer or other official or officials authorized to receive municipal funds is (are) _____.

_____ _____

Date Mayor (Chairman of Commission)

Attest:

_____

Clerk"

(c) The certificate shall be executed by the highest elective official, whether designated as "mayor" or by some other term or as the

"chairman of the commission" in those municipal corporations having a commission form of government, and shall be attested by the clerk. The name of the municipal corporation used in the certificate shall be its official corporate name. The name of the municipal treasurer or other official or officials authorized to receive municipal funds shall be listed in the certificate and the instrument transferring funds to the municipal corporation shall be payable to such treasurer or other official or officials as listed in the certificate.

(d) The information contained in the certificate shall constitute the basis upon which the Office of the State Treasurer shall make the distribution of funds under this article.

(e) Any person who willfully and knowingly signs a certificate containing false information shall be guilty of a misdemeanor. (Ga. L. 1965, p. 458, § 4; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the middle of subsections (a) and (d).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 522 et seq.

36-40-43. When certificate to be filed; effect of failure to file certificate.

Prior to June 1 of each year, a certificate shall be filed which shall be the basis upon which payments shall be made of funds made available under this article for the immediately succeeding fiscal year beginning July 1 and ending June 30. If no certificate is filed within the time limitation specified in this Code section, the municipality shall not be entitled to and shall not be paid any funds for the applicable period and such municipality shall not be included in the formula for determining the amount of the grants as provided in Code Section 36-40-44. (Ga. L. 1965, p. 458, § 5.)

36-40-44. Computation of allocation of funds.

(a) To the extent that funds are made available by any law for the purposes set out in Code Section 36-40-41, the Office of the State Treasurer is authorized and directed to grant such funds to the municipal corporations of this state, as defined in Code Section 36-40-40, on the following basis:

(1) An amount equal to five ten-thousandths of the total sum available at any given time for grants under this article shall be first

determined, and each municipal corporation whose population is 500 or less shall receive as its total grant such portion of the five ten-thousandths amount so determined as its population proportionately bears to 500. Such grants shall be referred to as "paragraph (1) grants."

(2) The amount remaining for distribution after deducting the total amount of paragraph (1) grants shall then be divided by the total population of all municipal corporations whose population exceeds 500, to arrive at a per capita amount. Such per capita amount shall be multiplied, in turn, by the population of each municipal corporation whose population exceeds 500. Any such municipal corporation whose population when so multiplied equals less than the five ten-thousandths amount as first determined under paragraph (1) of this Code section shall receive as its total grant the five ten-thousandths amount. Such grants shall be referred to as "paragraph (2) grants."

(3) The amount remaining for distribution after deducting the total amount of paragraph (1) and paragraph (2) grants shall then be divided by the total population of all remaining municipal corporations (eliminating those receiving paragraph (1) and paragraph (2) grants), to arrive at a per capita amount for such remaining municipal corporations. The per capita amount as so determined shall then be multiplied by the population of each such remaining municipal corporation to arrive at its respective grant. Such grants shall be referred to as "paragraph (3) grants."

(b) Whenever the term "population" is used in this article, it means population as determined according to the United States decennial census of 1980 or any future such census.

(c) The computation and payments of individual municipal grants as called for in this article shall be made by the Office of the State Treasurer. (Ga. L. 1965, p. 458, § 2; Ga. L. 1973, p. 524, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the middle of subsection (a) and at the end of subsection (c).

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Distribution of funds on basis of 1960 and 1970 censuses. — In distributing grants to municipalities for fiscal year 1970-71, the state treasurer should distribute one-half of funds appropriated on

the basis of the 1960 United States decennial census and the remaining one-half on the basis of the 1970 census. 1970 Op. Att'y Gen. No. 70-62.

Computation of allocation for city qualifying under 1970 census. — A municipality which did not qualify under the 1960 United States census, but which does qualify under the 1970 United States census, would receive, when applicable, 5/10,000ths of the amount which is available for distribution under the 1970 United States census; this would be one-half of the total amount appropriated for fiscal year 1970-71. 1970 Op. Att'y Gen. No. 70-62.

36-40-45. Payment and use of funds.

Funds distributed under this article by the Office of the State Treasurer shall be paid to the municipal corporation in the name of the municipal treasurer or other official or officials authorized to receive municipal funds, as listed in the certificate required by Code Section 36-40-42. Such funds shall be expended by the municipal corporation only for the purposes prescribed in Code Section 36-40-41. (Ga. L. 1965, p. 458, § 6; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" near the beginning of the first sentence of this Code section.

36-40-46. Submission of annual audit; adjustment of fund distribution; effect of failure to submit audit; procedure when municipal corporation has no annual audit.

(a) The governing authority of each municipal corporation shall submit to the state auditor a copy of its regular annual audit not later than six months after the end of the fiscal year for which the audit was made. The state auditor shall compare the amount of funds distributed to each municipal corporation in such year under this article against the amount of funds expended by each municipal corporation in such year for the purposes authorized by such Code sections. If the state auditor determines that the amount so expended is less than the amount distributed, he shall certify such amount to the Office of the State Treasurer, which shall deduct and withhold the certified amount from the next funds to be distributed to the offending municipal corporation under this article. If, however, a municipal corporation expending less than the amount distributed to it certifies at the time of the submission of its audit that it is accumulating such funds for a specified allowable purpose and submits proof of the deposit or investment of such funds, then such municipal corporation will be deemed to have complied with the requirements of this Code section, except that the amount of such funds shall be added to the amount of funds distributed to such municipal corporation in the next succeeding year or years for the purpose of making the comparison and determination provided for in this Code section.

(b) Upon certification by the state auditor to the Office of the State Treasurer that the audit required by this Code section from any municipal corporation has not been received, the Office of the State Treasurer shall not distribute any further funds under this article to such offending municipal corporation until the state auditor again certifies to the Office of the State Treasurer that the delinquent audit has been filed. It shall be the duty of the state auditor to make such certification when no audit is received or when a delinquent audit is received.

(c) If any municipal corporation is not now having a regular annual audit made of its funds, the Office of the State Treasurer shall not distribute any further funds under this article to such municipal corporation until either:

(1) An audit has been made and submitted to the state auditor; or

(2) The mayor or clerk submits a statement under oath to the state auditor stating:

(A) That the municipal corporation does not now have a regular annual audit;

(B) That the funds received under this article have been deposited in and disbursed from a separate account; and

(C) That the funds have been expended for the purposes authorized by this article.

(d) Upon the request of the Governor or the commissioner of transportation, the state auditor is authorized to audit the books and records of each municipal corporation to verify the accuracy of the report so filed with him and to ensure that the expenditure of such funds has been made for the purposes intended. (Ga. L. 1966, p. 249, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" five times throughout this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Subsection (c) of this section requires that mayor or clerk submit a statement under oath stating that municipality does not have a regular annual audit, that the funds received under this act have been deposited in and disbursed from a separate account, and that the funds have been expended for the purposes authorized by this act. In the absence of the foregoing, the state treasurer is not authorized to distribute any further funds to a municipality, and in all probability any distributions to a municipality not meeting alternatives stated in this section are questionable. 1965-66 Op. Att'y Gen. No. 66-116 (see O.C.G.A. § 36-40-46).

Determination of compliance. — Fiscal Division of the Department of Administrative Services (now the Office of

the State Treasurer) is required to make some determination as to whether municipality is now having regular annual audit of its funds, and if not, whether any of the two specified alternatives are being complied with. 1965-66 Op. Att'y Gen. No. 66-116.

CHAPTER 41

URBAN RESIDENTIAL FINANCE AUTHORITIES FOR LARGE MUNICIPALITIES

Sec.
36-41-1. Short title.
36-41-2. Legislative findings and declaration of public necessity.
36-41-3. Definitions.
36-41-4. Creation of authority; governing board; filing of resolutions with Secretary of State; filling of vacancies on board; officers; compensation of members of board; promulgation of rules and regulations.
36-41-5. Powers of authority generally; establishment of administrative guidelines for determination of eligibility.
36-41-6. Loans to qualified housing sponsors or eligible households; loans to lending institutions.
36-41-7. Purchase of mortgages or security interests or participations therein.
36-41-8. Issuance of revenue bonds; use and commitment of funds; form and contents of bonds; execution; sale; temporary bonds; refunding bonds; trust indenture; validation of bonds; bonds as authorized investments.
36-41-9. Pledge of assets for payment of bonds.
36-41-10. Bonds or obligations not public debt.
36-41-11. Tax exemptions.
36-41-12. Competition with Georgia Housing and Finance Authority.
36-41-13. Annual audit.

Cross references. — Housing, T. 8, C. 3. Clearance and rehabilitation of blighted areas, § 8-4-1 et seq.

36-41-1. Short title.

This chapter shall be known and may be cited as the "Urban Residential Finance Authorities Act for Large Municipalities." (Ga. L. 1979, p. 4662, § 1.)

36-41-2. Legislative findings and declaration of public necessity.

It is found, determined, and declared:

(1) That there exists within the large municipalities of the state a serious shortage of decent, safe, and sanitary housing which a significant portion of the persons and families residing or desiring to reside in such municipalities can afford. This shortage is inimical to the safety, health, and welfare of the residents of this state and the sound growth of its large municipalities. The cost of financing the ownership and rehabilitation of housing in such municipalities is a major factor affecting the ability of a person to obtain decent and safe

housing therein. In order to remedy such housing shortages, it is necessary to implement a public program to reduce the cost of financing for the acquisition and rehabilitation of housing, in order to make the acquisition of housing feasible for all persons and families residing or desiring to reside in the large municipalities of the state;

(2) That it is necessary and essential that public corporations be created for such large municipalities of the state directly, or indirectly through qualified lending institutions, to make loans at rates below market to finance either the acquisition or rehabilitation or both of residential housing and to acquire mortgages in order to encourage investment in and upgrade urban areas;

(3) That it is necessary and in the best interests of the state to provide loans at rates below market for the acquisition and rehabilitation of housing which will:

(A) Provide for and promote the public health, safety, and welfare in the large municipalities of the state;

(B) Reduce unemployment and encourage the increase of industrial and commercial activities and economic development in the large municipalities;

(C) Provide for the efficient and well-planned growth and development of the large municipalities, including the elimination and prevention of slum areas and blight, and for the proper coordination of industrial facilities with public services, mass transportation facilities, and residential development, by providing an incentive for home ownership within the geographical limits of the large municipalities;

(D) Assist persons and families in acquiring and owning decent, safe, and sanitary housing which they can afford within the geographic limits of the large municipalities;

(E) Promote the integration of families of varying economic means in the large municipalities; and

(F) Preserve and increase the tax base of the large municipalities; and

(4) Accordingly, that it is a valid public purpose, as a matter of public health, safety, convenience, and welfare, to assist in providing financing for the acquisition, construction, or rehabilitation of housing in the large municipalities of the state and that the creation of public corporations and instrumentalities of the state is the most feasible method by which the state can accomplish such public purposes. (Ga. L. 1979, p. 4662, § 2; Ga. L. 1980, p. 556, § 1; Ga. L. 1987, p. 3, § 36.)

36-41-3. Definitions.

As used in this chapter, the term:

(1) "Authority" means any public corporation created by this chapter.

(2) "Bonds" means any bonds, including refunding bonds, or any notes or other obligations authorized to be issued by an authority pursuant to this chapter.

(3) "Eligible household" means any household which does not have sufficient income to afford to pay the amounts at which private enterprise, without federally aided, state aided, or authority aided mortgages, is providing a substantial supply of decent, safe, and sanitary housing and which satisfies the income limitations set by each authority in administrative guidelines and procedures established pursuant to subsection (c) of Code Section 36-41-5.

(4) "Federally aided mortgage" means any mortgage insured or guaranteed by an agency of the United States government or any mortgage receiving special benefits, directly or indirectly, under any federal laws designated specifically to encourage the purchase of housing.

(5) "Governing body" means the elected or duly appointed officials constituting the governing body of a large municipality.

(6) "Household" shall have that meaning specified by the United States Bureau of the Census in its 1980 census.

(7) "Income" shall have that meaning specified by the United States Bureau of the Census in its 1980 census.

(8) "Lending institution" means any bank or trust company, savings and loan association, building and loan association, savings bank, insurance company, mortgage banker, mortgage broker, or other financial institution, any governmental agency, or any holding company for any of the foregoing. Such lending institution shall have a place of business in this state and shall be authorized to do business in this state.

(9) "Median household income" shall have that meaning used in the United States decennial census for the Metropolitan Statistical Area of the particular municipality activating the particular authority as adjusted from time to time by the United States Department of Housing and Urban Development.

(10) "Mortgage" means a deed to secure debt, together with the promissory note, the repayment of which is secured by such deed to secure debt, which is held by either the authority or a lending

institution, which deed to secure debt encumbers either a fee simple or leasehold estate located within the geographic boundaries of a large municipality activating the authority and improved by residential housing.

(11) "Municipality" means any municipal corporation of this state having a population of 350,000 or more according to the United States decennial census of 1980 or any future such census.

(12) "Nonprofit housing corporation" means a nonprofit or charitable private corporation providing safe and sanitary dwelling accommodations to persons of low income in such manner as to be essentially similar in operation and function to any authority or housing authority essential under this chapter.

(13) "Qualified housing sponsor" means an entity, whether organized for profit or not, meeting criteria established by the authority, which has undertaken to provide housing which will be available for sale or rent to eligible persons and families upon such terms and in conformity with administrative guidelines established by the authority. With respect to residential housing to be occupied substantially by students, the term "qualified housing sponsor" shall mean a nonprofit educational institution which is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, which provides a program of education beyond the high school level, and which:

(A) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) Provides an educational program for which it awards a bachelor's degree or provides an educational program, admission into which is conditioned upon the prior attainment of a bachelor's degree or its equivalent, for which it awards a postgraduate degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree; and

(C) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution whose credits are accepted, on transfer, by the university system and its educational units for credit on the same basis as if transferred from an institution so accredited;

provided, however, that a nonprofit educational institution which is otherwise a qualified housing sponsor as defined in this paragraph shall be deemed to be a qualified housing sponsor notwithstanding such institution's maintenance of a special early admission policy for gifted high school students.

(14) "Real property" means all lands, franchises, and interests in land, including lands under water and riparian rights, space rights, and air rights, and any and all other things usually included within such term. The term "real property" shall include any and all interests in such property less than full title, such as easements, incorporeal hereditaments, and every estate or interest or right, legal or equitable, including terms for years.

(15) "Rehabilitation costs" means the total of all costs incurred by eligible households in the rehabilitation of residential housing which are approved by an authority as reasonable and necessary, which costs shall include, but shall not necessarily be limited to, the following: the cost of site preparation and development; fees for architectural, engineering, legal, accounting, and other services paid or payable in connection with the planning, reconstruction, and financing of residential housing; the cost of necessary surveys, plans, and permits; the cost of insurance, interest, financing, taxes, assessments, and other operating and carrying costs during rehabilitation; the cost of rehabilitation, reconstruction, fixturing, furnishing, and equipping residential housing; the cost of land improvements, including, but not limited to, landscaping and off-site improvements, whether or not any such cost has been paid in cash or in a form other than cash; and the cost of such other items as the authority shall determine to be reasonable and necessary for the rehabilitation of residential housing.

(16) "Residential housing" means any real property and improvement thereon, whether multifamily residential housing or single-family residential housing, within the geographic boundaries of a large municipality activating the authority, which is owned, in whole or in part, by an eligible household or which is providing or shall provide, in whole or in part, dwelling accommodations for eligible households; provided, however, that with respect to multifamily residential housing, such multifamily residential housing shall be deemed to be occupied by eligible households if at least 20 percent of the dwelling units of such multifamily residential housing are occupied by eligible households. The term "residential housing" shall include dormitories, apartment dwellings, or other housing facilities which shall be occupied primarily by students.

(17) "Security interest" means an interest in personal property installed or to be installed in residential housing, which interest secures, in whole or in part, the repayment of a promissory note, the holder of which interest and note is either an authority or a lending institution. The term "security interest" includes all documentation executed in connection with the creation of such interest and specifically includes both the aforesaid promissory note and a security agreement.

(18) "State" means the State of Georgia.

(19) "State aided mortgage" means a mortgage loan for housing for eligible households assisted under this chapter.

(20) "Student" means any individual who possesses a certificate of admission or enrollment at an institution for higher education that is a qualified housing sponsor. (Ga. L. 1979, p. 4662, § 3; Ga. L. 1980, p. 556, §§ 2, 3; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 391, § 1; Ga. L. 1986, p. 947, § 1; Ga. L. 1987, p. 150, § 1; Ga. L. 1988, p. 1530, §§ 1, 2; Ga. L. 1991, p. 989, § 3.)

36-41-4. Creation of authority; governing board; filing of resolutions with Secretary of State; filling of vacancies on board; officers; compensation of members of board; promulgation of rules and regulations.

There is created in and for each municipality of this state, as defined in paragraph (11) of Code Section 36-41-3, a public body corporate, which shall be deemed to be an instrumentality of the state, to be known as the "urban residential finance authority" of such municipality and which shall be governed by a board of not less than seven nor more than nine members. Each member of the board shall be a resident of the large municipality activating the authority. No more than two members of the board may be appointed by the mayor of the large municipality activating the authority with the remaining members appointed by the governing body of the municipality for such term and upon such conditions as specified by resolution of the governing body. Any member of the governing body of the large municipality, the mayor or other chief executive thereof, and the chief fiscal officer thereof may serve on the board. The provisions of Chapter 62A of this title relating to ethics and conflicts of interest shall apply to members of the board of each authority created under this Code section. No authority created under this Code section shall transact any business or exercise any powers under this chapter until the governing body of the large municipality activating the authority, by resolution, declares that there is need for an authority to function in such municipality. A copy of the resolution adopted by the governing body and copies of any resolution adopted by the governing body providing for filling vacancies in the membership of the board of the authority or making any changes in the membership of the board of the authority shall be filed with the Secretary of State. Appointments to fill vacancies on the board of any authority, either for an unexpired or full term as fixed in the original resolution creating the same, shall be made by the governing body of the municipality. The members of the board of each authority shall elect one of their members as chairman and another as vice-chairman and shall also elect a secretary-treasurer, who need not be a member of the board and need

not be a resident of the municipality activating such authority. Each member of the board of each authority shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member is in attendance at a meeting of the authority, but shall receive the same for not more than 20 meeting days during any one fiscal year. For attendance at any conference in connection with the performance of their official duties, other than a meeting of the authority, members shall be reimbursed for actual expenses incurred and travel expenses in the same manner as provided by law for members of the General Assembly but shall receive the same for not more than ten days during any one fiscal year. However, if the secretary-treasurer is not a member of the board, then the secretary-treasurer may receive such compensation for his services as may be agreed upon by the members of the board. Each authority shall make rules and regulations for its government and may delegate to one or more of its members or its officers, agents, and employees such powers and duties as may be deemed necessary and proper. (Ga. L. 1979, p. 4662, § 4; Ga. L. 1984, p. 337, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 1530, § 3.)

Cross references. — Expense allowances for General Assembly members, §§ 28-1-8 and 45-7-4.

36-41-5. Powers of authority generally; establishment of administrative guidelines for determination of eligibility.

(a) Except as otherwise limited by this chapter, each authority shall have the power:

(1) To bring and defend actions;

(2) To have a seal and alter the same at its pleasure;

(3) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter, including contracts with any agency or authority or nonprofit housing corporation within this state;

(4) To make and alter bylaws for its organization and internal management;

(5) To acquire, hold, and dispose of real and personal property for its corporate purposes;

(6) To appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their compensation;

(7) To borrow money and to issue bonds, the term of which shall not exceed 40 years, and to provide for the rights of the holders thereof;

(8) To make loans pursuant to Code Section 36-41-6 for the financing, acquisition, or rehabilitation of residential housing, the repayment of which is secured by mortgages or security interests or other assets and funds of the authority or other security devices determined to be satisfactory by the authority; to participate in the making of loans secured by mortgages or security interests or other security devices determined to be satisfactory by the authority; to undertake commitments to make loans secured by mortgages or security interests or other security devices determined to be satisfactory by the authority; to acquire and, pursuant to Code Section 36-41-7, to contract to acquire mortgages or security interests or participations therein, owned by lending institutions, the Federal National Mortgage Association, or any federal or state agency; and to enter into advance commitments to such organizations for the purchase of such mortgages or security interests or participations;

(9) To sell mortgages and security interests at public or private sale; to negotiate modifications or alterations in mortgages and security interests; to foreclose on any mortgage or security interest in default or commence any action to protect or enforce any right conferred upon it by any law, mortgage, security interest, contract, or other agreement; and to bid for and purchase property which was the subject of such mortgage or security interest, at any foreclosure or at any other sale, to acquire or take possession of any such property; and, in the event that the authority takes possession of any such property, to complete, administer, and pay the principal and interest of any obligations incurred in connection with such property and to operate, manage, lease, dispose of, and otherwise deal with such property in such manner as may be necessary or desirable to protect the interests of the authority and the holders of its bonds and other obligations;

(10) To collect fees and charges in connection with its loans, commitments, and servicing, including, but not limited to, reimbursement of costs of financing as the authority shall determine to be reasonable and as shall be approved by the authority;

(11) To make and execute contracts for the servicing of mortgages made or acquired by the authority pursuant to this chapter and to pay the reasonable value of services rendered to the authority pursuant to those contracts;

(12) To accept gifts, grants, loans, or other aid from the federal government, the state or any county or municipality within the state or any persons or corporations and to agree and comply with any conditions attached to such financial assistance;

(13) Subject to any agreement with bondholders, to invest moneys of the authority not required for immediate use to carry out the

purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of bond principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks which have deposits insured by the Federal Deposit Insurance Corporation or the Georgia Deposit Insurance Corporation and certificates of deposit of federal savings and loan associations and state building and loan associations which have deposits insured by the Federal Savings and Loan Insurance Corporation or the Georgia Deposit Insurance Corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or the Georgia Deposit Insurance Corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, the Federal Home Loan Bank of Atlanta, Georgia, or with any national or state bank, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct or general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least $50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least $50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys; and

(G) Any and all other obligations of investment grade and having a national recognized market including, but not limited to, rate guarantee agreements, guaranteed investment contracts, or other similar arrangements offered by any firm, agency, business, governmental unit, bank, insurance company, or other entity, provided that each such obligation shall permit moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(14) To make and contract to make loans to lending institutions on such terms and conditions as it shall determine. All lending institutions are authorized to borrow from the authority in accordance with subsection (d) of Code Section 36-41-6 and the administrative guidelines established by the authority pursuant to criteria set forth in this chapter;

(15) To procure insurance against any loss in connection with its property and other assets;

(16) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this chapter;

(17) To make loans pursuant to Code Section 36-41-6 to finance the construction of residential housing;

(18) To engage in and assist in the development and operation of low and moderate income housing pursuant to Code Section 8-3-30;

(19) To participate in or administer federal programs for the issuance of mortgage credit and to do all things necessary or convenient to qualify as an issuer of mortgage credit certificates;

(20) To participate in or administer or participate in and administer any federal, state, county, or municipal program designed to assist in lowering the cost of housing for eligible households;

(21) To provide financing for housing projects, without regard to targeting for eligible households, which encourages the development of housing in accordance with the comprehensive development plan of the municipality activating the authority;

(22) To participate, own, lease, develop, operate, or manage residential housing or other real and personal property in cooperation, joint venture, partnership, or other contractual obligations with the federal government, state, or any county or municipality within the state, or any qualified housing sponsor; and

(23) To participate in, issue on behalf of, or jointly issue any bonds, notes, or other obligations with any public housing authority, downtown development authority, or development authority within the state or the Georgia Housing and Finance Authority.

(b) No authority shall have the power of eminent domain.

(c) Each authority shall establish administrative guidelines as to income limitations for eligible households for the purposes of paragraph (3) of Code Section 36-41-3 by taking into account the following considerations, among others determined by the authority to be appropriate:

(1) The size of the family or number of persons who intend to reside together;

(2) The conditions and costs of obtaining and maintaining existing and available housing within the geographic boundaries of the municipality activating the authority;

(3) The costs of obtaining and maintaining newly constructed or rehabilitated housing within the geographic boundaries of the municipality activating the authority, including considerations of the total rehabilitation costs of such housing and the costs of financing such housing as affected by prevailing and available financing terms and conditions relating to nonfederally aided and nonstate aided mortgages; and

(4) The age or physical condition of the persons who intend to reside in the residential housing.

(d) The administrative guidelines established by each authority pursuant to subsection (c) of this Code section may differ in order to reflect the varying tenant composition and economic and housing conditions within the jurisdiction of each authority. (Ga. L. 1979, p. 4662, § 5; Ga. L. 1980, p. 556, §§ 4-6; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 391, §§ 2, 3; Ga. L. 1986, p. 947, §§ 2-4; Ga. L. 1987, p. 150, §§ 2-4; Ga. L. 1988, p. 1530, §§ 4, 5; Ga. L. 1989, p. 14, § 36; Ga. L. 1991, p. 1653, § 2-3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "others" was substituted for "other" in the introductory language of subsection (c).

Pursuant to Code Section 28-9-5, in 1987, "Bank" was inserted following "Federal Intermediate Credit" in subparagraph (a)(13)(C).

Pursuant to Code Section 28-9-5, in 1988, "and" was deleted at the end of paragraph (a)(21).

36-41-6. Loans to qualified housing sponsors or eligible households; loans to lending institutions.

(a) With respect to the power to make loans set forth in subsection (a) of Code Section 36-41-5, each authority may make loans to qualified housing sponsors or eligible households for the financing, acquisition, or rehabilitation of residential housing within the geographic boundaries of the large municipality activating the authority. Any such loan:

(1) Shall be used for all or part of the cost of financing, acquiring, or rehabilitating residential housing, including the construction of residential housing, in accordance with the rules of the authority; and

(2) Shall be secured in such manner and be repaid in such period, not exceeding 40 years, as may be determined by the authority and shall bear interest at a rate determined by the authority.

(b) Each authority may make and contract to make loans to lending institutions, on such terms and conditions as it shall determine, in accordance with the following criteria, and all lending institutions are authorized to borrow from the authority in accordance with administrative guidelines of the authority established pursuant to the following criteria:

(1) The authority shall require that each lending institution receiving a loan pursuant to this subsection shall issue and deliver to the authority evidence of its indebtedness to the authority, which shall constitute a general obligation of such lending institution and shall bear such date or dates, shall mature at the time or times, shall be subject to prepayment, and shall contain such other provisions consistent with this Code section as the authority shall determine;

(2) The interest rate or rates and other terms of such loans made from the proceeds of any issue of bonds of the authority shall be at

least sufficient to assure the payment of the bonds and the interest thereon as the same become due;

(3) The authority may require that such loans shall be secured as to payment of both principal and interest by a pledge of collateral security in such amounts as the authority shall determine to be necessary to assure the payment of such loans and the interest thereon as the same become due. Such collateral security may consist of:

(A) Obligations for the payment of money by or guaranteed by the United States of America;

(B) Obligations for the payment of money by any of the following: the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Home Loan Bank System, the Export-Import Bank, the Federal Land Banks, the Federal National Mortgage Association, or the Government National Mortgage Association;

(C) Obligations for the payment of money by the state or any municipal corporation therein;

(D) Mortgages insured by the Federal Housing Administration or guaranteed by the United States Department of Veterans Affairs and such other mortgages insured or guaranteed by the federal government or by a private insurer as to payment of principal and interest as shall be approved by the authority;

(E) Conventional mortgages approved by the authority; or

(F) Any other security determined by the authority to protect the interests of the authority and the bondholders;

(4) The authority may require that collateral for such loans be deposited with a bank, trust company, or other financial institution acceptable to the authority located in the state and designated by the authority as custodian therefor. In the absence of such requirement and if required by the authority, each lending institution shall enter into an agreement with the authority containing such provisions as the authority shall deem necessary to:

(A) Identify adequately and maintain such collateral;

(B) Service such collateral; and

(C) Require the lending institution to hold such collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition thereof and the income therefrom. The authority may also establish such additional requirements as it shall deem necessary with respect to the pledging, assigning, setting aside, or holding of such

collateral and the making of substitutions therefor or additions thereto and the disposition of income and receipts therefrom;

(5) The authority shall require as a condition of each loan to a lending institution that such lending institution, within such period after receipt of the loan proceeds as the authority may prescribe by regulation, shall have entered into written commitments to make and, within such period thereafter as the authority may prescribe by regulation, shall have disbursed the net loan proceeds in mortgage loans on residential housing in an aggregate principal amount equal to the net amount of such loan proceeds. Such mortgage loans shall have such terms and conditions as the authority may prescribe;

(6) The authority shall require each lending institution to which the authority has made a loan to submit evidence satisfactory to the authority of the making of new mortgage loans for residential housing as required by this Code section and in connection therewith may, through its employees or agents, inspect the books and records of any such lending institution;

(7) Compliance by any lending institution with the terms of its agreement with or undertaking to the authority with respect to the making of mortgage loans for residential housing may be enforced by the decree of any court of competent jurisdiction;

(8) To the extent that any provisions of this subsection may be inconsistent with any provision of law of the state governing the affairs of lending institutions, the provisions of this subsection shall control.

(c) Notwithstanding any other provision of this chapter, each authority may finance residential housing under any provision of this chapter for occupancy by persons who, by virtue of age, physical condition, or other appropriate factors, are determined by the authority to require the assistance provided by such authority under this chapter, without regard to personal or family income. (Ga. L. 1979, p. 4662, § 6; Ga. L. 1980, p. 556, § 7; Ga. L. 1985, p. 391, §§ 4, 5; Ga. L. 1987, p. 150, §§ 5, 6; Ga. L. 1990, p. 45, § 1; Ga. L. 1992, p. 6, § 36.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985 and in 1987, semicolons were substituted for periods at the end of paragraphs (b)(1) through (b)(7).

36-41-7. Purchase of mortgages or security interests or participations therein.

(a) With respect to the power to purchase mortgages or security interests or participations therein from lending institutions as set forth in subsection (a) of Code Section 36-41-5, each authority may purchase

mortgages or security interests from lending institutions, which shall in turn reinvest the proceeds in new mortgage loans made as rapidly as possible on residential housing. A mortgage or security interest or participation therein shall not be acquired under this chapter unless the rate of interest on such mortgage meets the rates of interest established by the authority. The authority shall establish such rates of interest, taking into consideration all of the following:

(1) The cost to the authority in obtaining funds;

(2) Allowances to be made to a lending institution as a service fee in acting as a servicing agent in the administration and collection of the mortgage;

(3) Administrative costs of the authority;

(4) Allowances for any necessary reserves of the authority; and

(5) Regulations of the Internal Revenue Service of the United States.

(b) The authority may purchase participations in mortgages or security interests and shall make such rules as will adequately secure the authority and its bondholders with respect to the purchase of participations in mortgages or security interests.

(c) If the authority purchases a mortgage or a security interest or a participation therein from a lending institution, the lending institution may act as servicing agent for the authority in the collection and administration of the mortgage or security interest, subject to the rules established by the authority under this chapter.

(d) Subject to the rights of bondholders, the authority shall fix the amount of the fee to be paid a servicing agent, in such amount as shall reasonably compensate the servicing agent for performing such services. The amount of such fee may be deductible from any interest payable and collected under the mortgage or security interest.

(e) The authority may make commitments to lending institutions to purchase a mortgage or security interest or participation therein prior to the date of its execution, and a mortgage which is made by a lending institution under a prior commitment from the authority to purchase the mortgage or security interest or a participation therein shall satisfy the requirement to reinvest the proceeds from the sale as quickly as possible in mortgage loans for residential housing. The authority shall establish such fees as are necessary to reimburse the authority for the administrative costs incurred in connection with making commitments to purchase and in purchasing mortgages or security interests or participations therein.

(f) The authority may require as a condition of a purchase of any mortgage or security interest from a lending institution that the

lending institution represent and warrant to the authority any or all of the following:

(1) The unpaid principal balance and the interest rate thereon have been accurately stated to the authority and that the interest rate and all service charges in connection therewith are not usurious under the laws of the state;

(2) The amount of the unpaid principal balance is legally and validly due and owing;

(3) The lending institution has no notice of the existence of any counterclaim, offset, or defense asserted by the mortgagor or his successor in interest;

(4) Necessary documents have been properly recorded in the county in which the real estate lies;

(5) The mortgage or security interest constitutes a valid lien on the property described in the mortgage or security interest, subject only to such matters which do not adversely affect to a material degree the use or value of the property;

(6) The loan when made was lawful under the laws of the state or under federal law or both, whichever governed the making of the loan, and would be lawful on the date of purchase by the authority if made by the lending institution on that date in the amount of the unpaid principal balance;

(7) The mortgagor is not now in default in the payment of any installment of principal or interest, escrow funds, real property taxes, or otherwise in the performance of the mortgagor's obligations under the mortgage or security interest and has not, to the knowledge of the lending institution, been in default in the performance of any such obligation for a period of longer than 60 days;

(8) The mortgage or security interest requires that the property described therein be covered by a valid and subsisting policy of insurance issued by a responsible insurance company legally licensed and authorized to conduct and transact business in the state and providing fire and extended coverage to an amount not less than 80 percent of the insurable value of the property or in the amount of the mortgage or security interest, whichever the authority may determine;

(9) The insurance coverage referred to in paragraph (8) of this subsection is in full force and effect; and

(10) Subject to subsection (e) of this Code section, moneys received from the authority will be utilized for the financing, acquisition, or rehabilitation of residential housing within the geographic boundar-

ies of the municipality activating the authority, and that certification by the lending institution to the effect that moneys have been reloaned as set forth in this chapter will be filed with the authority pursuant to the rules of the authority and will be available to the members of the public and to members of the General Assembly.

(g) Each lending institution shall be liable to the authority for any damages suffered by the authority by reason of the untruth of any representation or the breach of any warranty and, in the event that any representation shall prove to be untrue when made or in the event of any breach of warranty, the lending institution shall, at the option of the authority, repurchase the mortgage or security interest or participation for the original purchase price adjusted for amounts subsequently paid thereon, as the authority may determine.

(h) The authority may require the recording of an assignment of any mortgage purchased by it from a lending institution. (Ga. L. 1979, p. 4662, § 7; Ga. L. 1980, p. 556, § 8; Ga. L. 1985, p. 391, § 6; Ga. L. 1987, p. 150, § 7.)

36-41-8. Issuance of revenue bonds; use and commitment of funds; form and contents of bonds; execution; sale; temporary bonds; refunding bonds; trust indenture; validation of bonds; bonds as authorized investments.

(a) Each authority shall have the power and is authorized, at one time or from time to time, to issue its revenue bonds in such principal amounts as, in the opinion of the authority, shall be necessary to provide sufficient funds for achieving the corporate purposes thereof, including the making and purchasing of loans for the acquisition, financing, construction, and rehabilitation of residential housing as provided in this chapter; the payment of interest on bonds of the authority; the establishment of reserves to secure such bonds; and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(b) The authority may retain the services of a qualified, independent financial advisor. The financial advisor shall not in any manner be involved in the underwriting of the revenue bonds or in the origination, sale, or servicing of mortgage loans for residential housing and shall serve only to advise the authority.

(c) The bonds of each issue shall be dated; shall bear interest at such rate or rates as shall be set by the authority (which may include the use of any formula or market-pricing mechanism determined by the authority to be reasonable), without limitation by any existing law of the state, payable at such times as the authority may determine; shall mature at such time or times as the authority may determine; shall be payable in

such medium of payment as to both principal and interest as may be determined by the authority; and, at the option of the authority, may be made redeemable before maturity or exchangeable for other bonds of the same series at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution or financing documents providing for the issuance of such bonds or both redeemable and exchangeable. The bonds may be issued as serial bonds or as term bonds with or without mandatory sinking fund provisions or as a combination thereof.

(d) The authority shall determine the form of the bonds, including any interest or principal coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company inside or outside the state.

(e) All such bonds shall be executed in the name of the authority by the chairman or vice-chairman and secretary-treasurer of the authority and shall be sealed with the official seal of the authority or a facsimile thereof. Coupons shall be executed in the name of the authority by the chairman or vice-chairman of the authority. The facsimile signature of both the chairman or vice-chairman and the secretary-treasurer of the authority may be imprinted in lieu of the manual signatures if the authority so directs, and the facsimile of the chairman's or vice-chairman's signature shall be used on such coupons. Bonds and interest coupons appurtenant thereto bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid notwithstanding the fact that before or after the delivery thereof such person ceased to hold such office. In addition to the foregoing, the bonds shall bear the manual or facsimile signature of the clerk of the superior court of each county wherein is located a municipality activating an authority.

(f) The bonds may be issued in coupon or in registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest. The authority may sell such bonds at public or private sale in such manner and for such price as it may determine to be for the best interest of the authority.

(g) Prior to the preparation of definitive bonds, the authority may issue interim receipts, interim certificates, or temporary bonds exchangeable for definitive bonds upon the issuance of the latter. The authority may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this chapter.

(h) Each authority is authorized to provide by resolution for the issue of refunding bonds of the authority for the purpose of refunding any bonds issued under this chapter and then outstanding, together with accrued interest thereon. The issuance of such refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same shall be governed by this chapter insofar as the same may be applicable.

(i) If the authority so determines, the bonds may be issued pursuant to a trust indenture between the authority and a trustee, which trust indenture shall have such terms and provisions as may be determined by the authority.

(j) Except as provided in this Code section, all revenue bonds issued by the authority under this chapter shall be executed, confirmed, and validated under, and in accordance with, Article 3 of Chapter 82 of this title, except that, in lieu of specifying the maturities or the rate or rates of interest which revenue bonds to be issued by an authority are to bear, the petition and complaint filed in the validation proceeding may state that the bonds, when issued, will mature no later than 40 years from their issuance and bear interest at a rate not exceeding a maximum per annum rate of interest specified in such notices or that, in the event that bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate specified in the notices; provided, however, that nothing contained in this subsection shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices.

(k) In the event that no appeal is filed within the time prescribed by law or, if an appeal is filed, that the judgment is affirmed on appeal, the judgment of the superior court so confirming and validating the issuance of the bonds and the security therefor shall be forever conclusive upon the validity of the bonds and the security therefor against the authority and all other persons.

(l) The bonds are made securities in which all public officers and bodies of the state and all municipalities; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also made securities

which may be deposited with and shall be received by all public officers and bodies of the state and all municipalities for any purposes of which the deposit of the bonds or other obligations of the state is now or may hereafter be authorized. (Ga. L. 1979, p. 4662, § 8; Ga. L. 1980, p. 556, §§ 9, 10; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 391, § 7; Ga. L. 1986, p. 10, § 36; Ga. L. 1986, p. 947, § 5; Ga. L. 1987, p. 3, § 36; Ga. L. 1987, p. 150, § 8.)

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

36-41-9. Pledge of assets for payment of bonds.

Each authority may pledge for the payment of its bonds such assets, funds, contract rights, and properties as the resolution providing for the issuance of its bonds may provide. Any such pledge made by the authority shall be valid and binding from the time when the pledge is made. The moneys or properties so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the authority, irrespective of whether such parties have notice thereof. No resolution or any other instrument by which a pledge is created need be recorded. (Ga. L. 1979, p. 4662, § 9; Ga. L. 1985, p. 391, § 8; Ga. L. 1987, p. 150, § 9.)

36-41-10. Bonds or obligations not public debt.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the state or any county, municipality, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of the state or any such county, municipality, or political subdivision. All such bonds and obligations shall be payable solely from the sources established for the payment thereof in the resolution or financing documents authorizing the issuance of such bonds; and no holder or holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of the state or any county, municipality, or political subdivision thereof, nor to enforce the payment thereof against any property of the state or any such county, municipality, or political subdivision. (Ga. L. 1979, p. 4662, § 11; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 391, § 9; Ga. L. 1987, p. 150, § 10.)

36-41-11. Tax exemptions.

As each authority will be performing essential governmental functions in the exercise of the powers conferred upon it by this chapter, the

state covenants with the holders of the bonds of an authority that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of any facilities maintained or acquired by it or any fees, rentals, or other charges for the use of such facilities or other income received by the authority and that the bonds and notes of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The exemption from taxation provided in this Code section shall not extend to tenants or lessees of the authority and shall not include exemptions from sales and use taxes on property purchased by the authority or for use by the authority. No authority shall be required to pay any intangible tax on the recording of any mortgage held or granted by the authority. (Ga. L. 1979, p. 4662, § 10; Ga. L. 1985, p. 391, § 10; Ga. L. 1987, p. 150, § 11.)

36-41-12. Competition with Georgia Housing and Finance Authority.

No authority shall compete with the Georgia Housing and Finance Authority to such an extent as to affect adversely the interests and rights of the holders of bonds issued by the Georgia Housing and Finance Authority. (Ga. L. 1979, p. 4662, § 12; Ga. L. 1991, p. 1653, § 2-3.)

36-41-13. Annual audit.

Each authority and each trustee acting on behalf of an authority shall submit to an annual independent audit performed by a qualified firm selected by the members of such authority. Payment for this audit shall be paid from any funds held by the trustee for the authority. (Ga. L. 1979, p. 4662, § 13; Ga. L. 1988, p. 1530, § 6.)

CHAPTER 42

DOWNTOWN DEVELOPMENT AUTHORITIES

Sec.
36-42-1. Short title.
36-42-2. Legislative purpose.
36-42-3. Definitions.
36-42-4. Creation of authorities; appointment and terms of directors; quorum.
36-42-5. Activation of authority by resolution; filing of resolution with Secretary of State and Department of Community Affairs; comments by Department of Community Affairs.
36-42-6. Action by resolution subsequent to activating authority.
36-42-7. Qualifications and reimbursement of directors; election of officers; training.
36-42-8. Powers of authorities generally.
36-42-8.1. Eminent domain by municipality or authority [Repealed].
36-42-9. Revenue bonds generally.
36-42-10. Applicability of "Revenue Bond Law"; form and provisions for exchange and transfer of bonds; certificate of validation; specification of interest rates in notice to district attorney or Attorney General.
36-42-11. Agreements and instruments of authority generally; use of proceeds; subsequent issues; bond anticipation notes.
36-42-12. Obligations of authorities not public debt of state or political subdivision thereof.
36-42-13. Constitutional authority for enactment of chapter; tax exemption.
36-42-14. Effect of chapter on other public authorities.
36-42-15. Construction of chapter; applicability of the "Georgia Uniform Securities Act of 2008."
36-42-16. Creation of special districts.

Cross references. — Development authorities generally, T. 42, C. 62.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For survey article on construction law, see 44 Mercer L. Rev. 125 (1992).

For note, "Procedural requirements for public approval of tax-exempt industrial development bonds under TEFRA", see 19 Ga. St. B.J. 84 (1982).

36-42-1. Short title.

This chapter may be referred to as the "Downtown Development Authorities Law." (Ga. L. 1981, p. 1744, § 1.)

Law reviews. — For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

JUDICIAL DECISIONS

Underground Atlanta is a public works. — Underground Atlanta was constructed under the Downtown Development Authorities Act and is a proper project under the Downtown Development Authorities Act; accordingly, the Under-

ground Atlanta project falls within the definition of "project" in O.C.G.A. § 36-42-3(6) and the totality of the agreements between the city and Underground Festival, Inc., clearly contemplates a public works project. City of Atlanta v. United Elec. Co., 202 Ga. App. 239, 414 S.E.2d 251 (1991).

36-42-2. Legislative purpose.

The revitalization and redevelopment of the central business districts of the municipal corporations of this state develop and promote for the public good and general welfare trade, commerce, industry, and employment opportunities and promote the general welfare of this state by creating a climate favorable to the location of new industry, trade, and commerce and the development of existing industry, trade, and commerce within the municipal corporations of this state. Revitalization and redevelopment of central business districts by financing projects under this chapter will develop and promote for the public good and general welfare trade, commerce, industry, and employment opportunities and will promote the general welfare of this state. It is, therefore, in the public interest and is vital to the public welfare of the people of this state, and it is declared to be the public purpose of this chapter, so to revitalize and redevelop the central business districts of the municipal corporations of this state. No bonds, notes, or other obligations, except refunding bonds, shall be issued by an authority under this chapter unless its board of directors adopts a resolution finding that the project for which such bonds, notes, or other obligations are to be issued will promote the foregoing objectives. (Ga. L. 1981, p. 1744, § 9.)

Cross references. — Clearance and rehabilitation of blighted areas, T. 8, C. 4.

JUDICIAL DECISIONS

Scope of application. — Although the "Downtown Development Authorities Law" expands the scope of permissible authority projects beyond that of the "Development Authorities Law" to include all types of commercial projects, the "Downtown Development Authorities Law" otherwise resembles the "Development Authorities Law" in design and purpose. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110 (1983).

Neither the increased breadth of the "Downtown Development Authorities Law" in comparison with the uniform industrial development authority statutes which preceded it, nor the apparently broad language of the enacting and definitions clauses therein, are sufficiently definite indications that the General Assembly intended to undertake a radical departure from its previous cautious approach and grant local governments unbridled power to finance all their public works through downtown development authorities. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110 (1983).

Street and government-building construction. — Municipality's attempt to use the "Downtown Development Authorities Law" to finance street improvements and construction and refurbishing of governmental buildings is unconstitutional. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110 (1983).

36-42-3. Definitions.

As used in this chapter, the term:

(1) "Authority" means each public body corporate and politic created pursuant to this chapter.

(2) "Cost of the project" or "cost of any project" means and includes:

(A) All costs of acquisition (by purchase or otherwise), construction, assembly, installation, modification, renovation, or rehabilitation incurred in connection with any project or any part of any project;

(B) All costs of real property, fixtures, or personal property used in or in connection with or necessary for any project or for any facilities related thereto, including, but not limited to, the cost of all land, estates for years, easements, rights, improvements, water rights, connections for utility services, fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; and the cost of preparation of any application therefor and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project;

(C) All financing charges and loan fees and all interest on revenue bonds, notes, or other obligations of an authority which accrues or is paid prior to and during the period of construction of a project and during such additional period as the authority may reasonably determine to be necessary to place such project in operation;

(D) All costs of engineering, surveying, and architectural and legal services and all expenses incurred by engineers, surveyors, architects, and attorneys in connection with any project;

(E) All expenses for inspection of any project;

(F) All fees of fiscal agents, paying agents, and trustees for bondholders under any trust agreement, indenture of trust, or similar instrument or agreement; all expenses incurred by any such fiscal agents, paying agents, and trustees; and all other costs and expenses incurred relative to the issuance of any revenue bonds, notes, or other obligations for any project;

(G) All fees of any type charged by an authority in connection with any project;

(H) All expenses of or incidental to determining the feasibility or practicability of any project;

(I) All costs of plans and specifications for any project;

(J) All costs of title insurance and examinations of title with respect to any project;

(K) Repayment of any loans made for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(L) Administrative expenses of the authority and such other expenses as may be necessary or incidental to any project or the financing thereof or the placing of any project in operation; and

(M) The establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, or such other funds or reserves as the authority may approve with respect to the financing and operation of any project and as may be authorized by any bond resolution, trust agreement, indenture of trust, or similar instrument or agreement pursuant to the provisions of which the issuance of any revenue bonds, notes, or other obligations of the authority may be authorized.

Any cost, obligation, or expense incurred for any of the foregoing purposes shall be a part of the cost of the project and may be paid or reimbursed as such out of proceeds of revenue bonds, notes, or other obligations issued by the authority.

(3) "Downtown development area" means the geographical area within a municipal corporation designated as such by the resolution of the governing body activating the authority for such municipal corporation as modified by any subsequent resolution of the governing body of such municipal corporation.

(4) "Governing body" means the elected or duly appointed officials constituting the governing body of any municipal corporation in the State of Georgia.

(5) "Municipal corporation" means any city or town in this state.

(6) "Project" means:

(A) The acquisition, construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements located or to be located within the downtown development area, and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, any undertaking authorized by Chapter 43 of this title as part of a city business improvement district, any undertaking

authorized in Chapter 44 of this title, the "Redevelopment Powers Law," when the downtown development authority has been designated as a redevelopment agency, or any undertaking authorized in Chapter 61 of this title, the "Urban Redevelopment Law," when the downtown development authority has been designated as an urban redevelopment agency, all for the essential public purpose of the development of trade, commerce, industry, and employment opportunities in its authorized area of operation; and

(B) The provision of financing to property owners for the purpose of installing or modifying improvements to their property in order to reduce the energy or water consumption on such property or to install an improvement to such property that produces energy from renewable resources.

A project may be for any industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determine, by a duly adopted resolution, that the project and such use thereof would further the public purpose of this chapter. Such term shall include any one or more buildings or structures used or to be used as a not for profit hospital, not for profit skilled nursing home, or not for profit intermediate care home subject to regulation and licensure by the Department of Community Health and all necessary, convenient, or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.

(7) "Revenue bonds" or "bonds" means any bonds of an authority which are authorized to be issued under the Constitution and laws of Georgia, including refunding bonds but not including notes or other obligations of an authority. (Ga. L. 1981, p. 1744, § 1; Ga. L. 1988, p. 1463, § 1; Ga. L. 1992, p. 6, § 36; Ga. L. 1992, p. 2533, § 1; Ga. L. 2002, p. 415, § 36; Ga. L. 2008, p. 12, § 2-34/SB 433; Ga. L. 2010, p. 261, § 1/HB 1388.)

The 2010 amendment, effective July 1, 2010, in paragraph (6), in the first sentence, substituted "means:" for "mean", added the subparagraph (6)(A) designation, substituted "The" for "the" at the beginning and added "; and" at the end of subparagraph (6)(A), and added subparagraph (6)(B).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a comma was added following "licenses" near the end of subparagraph (2)(B).

JUDICIAL DECISIONS

Scope of application. — Although the "Downtown Development Authorities Law" expands the scope of permissible authority projects beyond that of the "Development Authorities Law" to include all types of commercial projects, the "Downtown Development Authorities Law" otherwise resembles the "Development Authorities Law" in design and purpose. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110 (1983).

Neither the increased breadth of the

"Downtown Development Authorities Law" in comparison with the uniform industrial development authority statutes which preceded that law, nor the apparently broad language of the enacting and definitions clauses therein, are sufficiently definite indications that the General Assembly intended to undertake a radical departure from the General Assembly's previous cautious approach and grant local governments unbridled power to finance all local public works through downtown development authorities. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110 (1983).

Underground Atlanta is a public works project. — Underground Atlanta was constructed under the Downtown Development Authorities Act and is a proper project under the Downtown Development Authorities Act; accordingly, the Underground Atlanta project falls within the definition of "project" in paragraph (6) of O.C.G.A. § 36-42-3 and the totality of the agreements between the city and Underground Festival, Inc., clearly contemplates a public works project. City of Atlanta v. United Elec. Co., 202 Ga. App. 239, 414 S.E.2d 251 (1991).

Street and government-building construction. — Municipality's attempt to use the "Downtown Development Authorities Law" to finance street improvements and construction and refurbishing of governmental buildings is unconstitutional. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110 (1983).

36-42-4. Creation of authorities; appointment and terms of directors; quorum.

There is created in and for each municipal corporation in this state a public body corporate and politic to be known as the downtown development authority of such municipal corporation, which shall consist of a board of seven directors. The governing body of the municipal corporation shall appoint two members of the first board of directors for a term of two years each, two for a term of four years each, and three for a term of six years each. The governing body of the municipal corporation may appoint one of its elected members as a member of the downtown development authority. After expiration of the initial terms, except for the director who is also a member of the governing body of the municipal corporation, the terms of all directors shall be six years; provided, however, that the terms shall be four years for those directors appointed or reappointed on or after July 1, 1994. The term of a director who is also a member of the governing body of a municipal corporation shall end when such director is no longer a member of the governing body of the municipal corporation. If at the end of any term of office of any director a successor to such director has not been elected, the director whose term of office has expired shall continue to hold office until a successor is elected. A majority of the board of directors shall constitute a quorum. (Ga. L. 1981, p. 1744, § 2; Ga. L. 1992, p. 2533, § 2; Ga. L. 1994, p. 1006, § 1.)

JUDICIAL DECISIONS

Removal of director. — O.C.G.A. Ch. 42, T. 36 is silent as to whether a director may be removed and, assuming removal is possible, just how it might be accomplished, but the fact that the legislation provides specified terms for the office of

director is inconsistent with the idea of tenure at the pleasure of the city. Hernandez v. Downtown Dev. Auth., 256 Ga. 356, 349 S.E.2d 449 (1986).

36-42-5. Activation of authority by resolution; filing of resolution with Secretary of State and Department of Community Affairs; comments by Department of Community Affairs.

(a) No authority shall transact any business or exercise any powers under this chapter until the governing body of the municipal corporation shall, by proper resolution, declare that there is a need for an authority to function in such municipal corporation, thereby activating the authority. In its resolution, the governing body shall designate as the downtown development area that geographical area within the municipal corporation which, in the judgment of the governing body, constitutes the central business district and shall appoint the initial directors of the authority.

(b) A copy of the governing body's resolution shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under this chapter, and with the Department of Community Affairs. The Department of Community Affairs may, but shall not be required to, furnish written comments to any authority within 30 days after the governing body's resolution is filed with the Department of Community Affairs. Any such comments shall be furnished by the authority to the governing body of the municipal corporation which activated the authority. Such comments shall be informational only and shall not affect any action taken or to be taken by any authority or governing body, and no action of the authority or the governing body shall be required in response to any such comments. The requirements of this subsection relating to filing with the Department of Community Affairs shall apply only to authorities originally activated after July 1, 1983. (Ga. L. 1981, p. 1744, § 3; Ga. L. 1983, p. 1346, § 1.)

36-42-6. Action by resolution subsequent to activating authority.

The governing body of the municipal corporation may, by proper resolution adopted subsequent to its resolution activating its authority:

(1) Change its designation of the downtown development area to a geographical area within the municipal corporation which, in the judgment of the governing body, at the time constitutes the central business district, provided that any such change in the downtown development area shall be effective prospectively from the adoption of the resolution providing therefor and shall not affect any project of, or any action taken by, the authority within or with respect to the

downtown development area as defined prior to such change becoming effective; and

(2) Appoint directors of the authority which the governing body of the municipal corporation is authorized to appoint; and

(3) Disapprove any proposed issue of revenue bonds, notes, or other obligations of the authority, in the manner provided in this chapter. (Ga. L. 1981, p. 1744, § 4; Ga. L. 1983, p. 1346, § 2.)

36-42-7. Qualifications and reimbursement of directors; election of officers; training.

(a) Directors shall be:

(1) Taxpayers residing in the municipal corporation for which the authority is created;

(2) Owners or operators of businesses located within the downtown development area and who shall be taxpayers residing in the county in which is located the municipal corporation for which the authority is created; or

(3) Persons having a combination of the qualifications specified in paragraphs (1) and (2) of this subsection;

provided, however, that one of such directors may be a member of the governing body of the municipal corporation.

(b) Not less than four of the directors having the qualifications specified in subsection (a) of this Code section shall be persons who, in the judgment of the governing body of the municipal corporation, either have or represent a party who has an economic interest in the redevelopment and revitalization of the downtown development area. Successors to the directors shall be appointed by the governing body of the municipal corporation.

(c) The directors shall elect one of their members as chairman and another as vice chairman and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may but need not be a director. The directors shall receive no compensation for their services but shall be reimbursed for actual expenses incurred by them in the performance of their duties. Each authority shall have perpetual existence.

(c.1) Notwithstanding subsection (a) of this Code section, one director appointed to the board may reside outside the county; provided, however, that such appointed director owns a business within the downtown development area and is a resident of the State of Georgia. If subsequently to his or her appointment to the board pursuant to this

subsection, the director ceases to own a business within the downtown development area or reside in the State of Georgia, such director shall relinquish his or her seat on the board.

(d) Except for a director who is also a member of the governing body of a municipal corporation, each director shall attend and complete at least eight hours of training on downtown development and redevelopment programs within the first 12 months of a director's appointment to the downtown development authority. Directors in office on January 1, 1992, shall be exempt from this requirement unless reappointed for an additional term. (Ga. L. 1981, p. 1744, § 5; Ga. L. 1990, p. 570, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1992, p. 2533, § 2; Ga. L. 2008, p. 180, § 1/HB 1126.)

36-42-8. Powers of authorities generally.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To make and execute contracts, agreements, and other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, including, but not limited to, contracts for construction of projects, leases of projects, contracts for sale of projects, agreements for loans to finance projects, contracts with respect to the use of projects, and agreements to join or cooperate with an urban residential finance authority, created by the municipal corporation within which the downtown development area is located pursuant to the provisions of Chapter 41 of this title, in the exercise, either jointly or otherwise, of any or all of its powers for the purpose of financing, including the issuance of revenue bonds, notes, or other obligations of the authorities, planning, undertaking, owning, constructing, operating, or contracting with respect to any projects located within the downtown development area;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To finance (by loan, grant, lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend, improve, install,

sell, equip, expand, add to, operate, or manage projects and to pay the cost of any project from the proceeds of revenue bonds, notes, or other obligations of the authority or any other funds of the authority, or from any contributions or loans by persons, corporations, partnerships (whether limited or general), or other entities, all of which the authority is authorized to receive, accept, and use;

(6) To borrow money to further or carry out its public purpose and to execute revenue bonds, notes, other obligations, leases, trust indentures, trust agreements, agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable, in the judgment of the authority, to evidence and to provide security for such borrowing;

(7) To issue revenue bonds, notes, or other obligations of the authority and use the proceeds thereof for the purpose of paying, or loaning the proceeds thereof to pay, all or any part of the cost of any project and otherwise to further or carry out the public purpose of the authority and to pay all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out such purpose;

(8) To make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other source, whether public or private, for loans, grants, guarantees, or other financial assistance in furtherance of the authority's public purpose and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or municipal government or agency or other source;

(9) To enter into agreements with the federal government or any agency thereof to use the facilities or services of the federal government or any agency thereof in order to further or carry out the public purposes of the authority;

(10) To contract for any period, not exceeding 50 years, with the State of Georgia, state institutions, or any municipal corporation or county of this state for the use by the authority of any facilities or services of the state or any such state institution, municipal corporation, or county, or for the use by any state institution or any municipal corporation or county of any facilities or services of the authority, provided that such contracts shall deal with such activities and transactions as the authority and any such political subdivision with which the authority contracts are authorized by law to undertake;

(11) To extend credit or make loans to any person, corporation, partnership (whether limited or general), or other entity for the costs

of any project or any part of the costs of any project, which credit or loans may be evidenced or secured by loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, or such other instruments, or by rentals, revenues, fees, or charges, upon such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument of such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project, and such other terms and conditions, as the authority may deem necessary or desirable;

(12) As security for repayment of any revenue bonds, notes, or other obligations of the authority, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority (including, but not limited to, real property, fixtures, personal property, and revenues or other funds) and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes, or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument. The State of Georgia, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(13) To receive and use the proceeds of any tax levied by a municipal corporation to pay the costs of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(14) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;

(15) To use any real property, personal property, or fixtures or any interest therein or to rent or lease such property to or from others or make contracts with respect to the use thereof, or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner as it deems to the best advantage of the authority and the public purpose thereof;

(16) To acquire, accept, or retain equitable interests, security interests, or other interests in any real property, personal property, or fixtures by loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(17) To appoint, select, and employ engineers, surveyors, architects, urban or city planners, fiscal agents, attorneys, and others and to fix their compensation and pay their expenses;

(18) To encourage and promote the improvement and revitalization of the downtown development area and to make, contract for, or otherwise cause to be made long-range plans or proposals for the downtown development area in cooperation with the municipal corporation within which the downtown development area is located;

(19) To adopt bylaws governing the conduct of business by the authority, the election and duties of officers of the authority, and other matters which the authority determines to deal with in its bylaws;

(20) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(21) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(22) To serve as an urban redevelopment agency pursuant to Chapter 61 of this title;

(23) To contract with a municipal corporation to carry out supplemental services in a city business improvement district established pursuant to Chapter 43 of this title; and

(24) To serve as a redevelopment agency pursuant to Chapter 44 of this title.

(b) The powers enumerated in each paragraph of subsection (a) of this Code section are cumulative of and in addition to those powers enumerated in the other paragraphs of subsection (a) of this Code section and elsewhere in this chapter; and no such power limits or

restricts any other power of the authority except that, notwithstanding any other provision of this chapter, no authority described in this chapter shall be granted the power of eminent domain. (Ga. L. 1981, p. 1744, § 6; Ga. L. 1982, p. 3, § 36; Ga. L. 1988, p. 902, § 1; Ga. L. 1988, p. 1463, § 2; Ga. L. 1992, p. 2533, § 3; Ga. L. 2006, p. 39, § 19/HB 1313.)

Editor's notes. — Ga. L. 2006, p. 39, § 1/HB 1313, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'The Landowner's Bill of Rights and Private Property Protection Act.'"

Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to petitions for condemnation filed on or after April 4, 2006.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 157 (2006).

36-42-8.1. Eminent domain by municipality or authority.

Repealed by Ga. L. 2006, p. 39, § 20/HB 1313, effective April 4, 2006.

Editor's notes. — This Code section was based on Code 1981, § 36-42-8.1, enacted by Ga. L. 1992, p. 2533, § 4.

Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that the repeal of this Code section shall only apply to petitions for condemnation filed on or after April 4, 2006.

36-42-9. Revenue bonds generally.

(a) Revenue bonds, notes, or other obligations issued by an authority shall be paid solely from the property (including, but not limited to, real property, fixtures, personal property, revenues, or other funds) pledged, mortgaged, conveyed, assigned, hypothecated, or otherwise encumbered to secure or to pay such bonds, notes, or other obligations.

(b) All revenue bonds, notes, and other obligations shall be authorized by resolution of the authority, adopted by a majority vote of the directors of the authority at a regular or special meeting.

(c) Reserved.

(d) Revenue bonds, notes, or other obligations shall bear such date or dates, shall mature at such time or times (not more than 40 years from their respective dates), shall bear interest at such rate or rates (which may be fixed or may fluctuate or otherwise change from time to time), shall be subject to redemption on such terms, and shall contain such other terms, provisions, covenants, assignments, and conditions as the resolution authorizing the issuance of such bonds, notes, or other obligations may permit or provide. The terms, provisions, covenants, assignments, and conditions contained in or provided or permitted by any resolution of the authority authorizing the issuance of such revenue bonds, notes, or other obligations shall bind the directors of the authority then in office and their successors.

(e) The authority shall have power from time to time and whenever it deems it expedient to refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose permitted under this chapter. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed upon, or may be sold and the proceeds applied to the purchase or redemption of the bonds to be refunded.

(f) There shall be no limitation upon the amount of revenue bonds, notes, or other obligations which any authority may issue. Any limitations with respect to interest rates or any maximum interest rate or rates found in Article 3 of Chapter 82 of this title, the "Revenue Bond Law," the usury laws of this state, or any other laws of this state shall not apply to revenue bonds, notes, or other obligations of an authority. (Ga. L. 1981, p. 1744, § 7; Ga. L. 1983, p. 1346, § 3; Ga. L. 1984, p. 941, § 2.)

36-42-10. Applicability of "Revenue Bond Law"; form and provisions for exchange and transfer of bonds; certificate of validation; specification of interest rates in notice to district attorney or Attorney General.

(a) All bonds issued by the authority under this chapter shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, the "Revenue Bond Law," except as provided in this chapter, provided that notes and other obligations of the authority may, but shall not be required to, be so validated.

(b) Bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions, as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide.

(c) Bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the county in which the issuing authority is located may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state.

(d) In lieu of specifying the rate or rates of interest which bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General, the notice to the public of the time, place, and date of the validation hearing, and the petition and complaint for validation may state that the bonds when issued will bear interest at a

rate not exceeding a maximum per annum rate of interest (which may be fixed or may fluctuate or otherwise change from time to time) specified in such notices and petition and complaint or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate (which may be fixed or may fluctuate or otherwise change from time to time) so specified; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

(e) The terms "cost of the project" and "cost of any project" shall have the meaning prescribed in this chapter whenever those terms are referred to in bond resolutions of an authority, in bonds, notes, or other obligations of an authority, or in notices or proceedings to validate such bonds, notes, or other obligations of an authority. (Ga. L. 1981, p. 1744, § 8.)

Law reviews. — For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

36-42-11. Agreements and instruments of authority generally; use of proceeds; subsequent issues; bond anticipation notes.

(a) Subject to the limitations and procedures provided by this Code section and by Code Section 36-42-10, the agreements or instruments executed by an authority may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority.

(b) The proceeds derived from the sale of all bonds, notes, and other obligations issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project, or for the purpose of refunding any bonds, notes, or other obligations issued in accordance with this chapter.

(c) Issuance by an authority of one or more series of bonds, notes, or other obligations for one or more purposes shall not preclude it from issuing other bonds, notes, or other obligations in connection with the same project or with any other projects; but the proceeding wherein any subsequent bonds, notes, or other obligations are issued shall recognize and protect any prior loan agreement, mortgage, deed to secure debt, trust deed, security agreement, or other agreement or instrument made for any prior issue of bonds, notes, or other obligations, unless in the

resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds, notes, or other obligations on a parity with such prior issue.

(d) An authority shall have the power and is authorized, whenever bonds of the authority shall have been validated as provided in this chapter, to issue from time to time its notes in anticipation of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether or not the notes to be renewed have matured. The authority may issue such bond anticipation notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. Such notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public sale or at private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority to any issue thereof; and the authority may include in any notes any terms, covenants, or conditions which the authority is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued. (Ga. L. 1981, p. 1744, § 8.)

36-42-12. Obligations of authorities not public debt of state or political subdivision thereof.

No bonds, notes, or other obligations of, and no indebtedness incurred by, an authority shall constitute an indebtedness or obligation of the State of Georgia or any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of this state or any county, municipal corporation, or political subdivision thereof. No holder or holders of any such bonds, notes, or other obligations shall ever have the right to compel any exercise of the taxing power of the state or any county, municipal corporation, or political subdivision thereof, nor to enforce the payment thereof against the state or any such county, municipal corporation, or political subdivision. (Ga. L. 1981, p. 1744, § 11.)

36-42-13. Constitutional authority for enactment of chapter; tax exemption.

This chapter is enacted pursuant to authority granted the General Assembly by the Constitution of Georgia. Each authority created

pursuant to this chapter is created for nonprofit and public purposes; and it is found, determined, and declared that the creation of each such authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of this state and that each authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter; and for such reasons the state covenants with the holders from time to time of the bonds, notes, and other obligations issued under this chapter that no such authority shall be required to pay any taxes or assessments imposed by this state or any counties, municipal corporations, political subdivisions, or taxing districts thereof upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise; and that the bonds, notes, and other obligations of each such authority, their transfer, and the income therefrom shall at all times be exempt from taxation within this state. The tax exemption provided for in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority. (Ga. L. 1981, p. 1744, § 12.)

Cross references. — Authority of General Assembly to create development authorities, Ga. Const. 1983, Art. IX, Sec. VI, Para. III.

JUDICIAL DECISIONS

Constitutional authority. — Downtown Development Authorities Law is solely based upon Ga. Const. 1983, Art. IX, Sec. VI, Para. III (development authorities) and not Ga. Const. 1983, Art. IX, Sec. III, Para. I (intergovernmental contracts). Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110 (1983).

36-42-14. Effect of chapter on other public authorities.

This chapter shall not affect any other authority existing as of April 17, 1981, or thereafter under general or local constitutional amendment or under general or local law. (Ga. L. 1981, p. 1744, § 14.)

36-42-15. Construction of chapter; applicability of the "Georgia Uniform Securities Act of 2008."

This chapter shall be liberally construed to effect the purposes hereof. The offer, sale, or issuance of bonds, notes, or other obligations by any authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008." No notice, proceeding, or publication except those required by this chapter shall be necessary to

the performance of any act authorized by this chapter, nor shall any such act be subject to referendum. (Ga. L. 1981, p. 1744, § 10; Ga. L. 2008, p. 381, § 10/SB 358.)

36-42-16. Creation of special districts.

Pursuant to Article IX, Section II, Paragraph VI of the Constitution of the State of Georgia, municipalities may create one or more special districts within the area of operation of a downtown development authority for the purpose of levying and collecting taxes, fees, or assessments to pay the cost of any project or to support the exercise of any other powers which the authority may possess. (Code 1981, § 36-42-16, enacted by Ga. L. 1992, p. 2533, § 5.)

CHAPTER 43

CITY BUSINESS IMPROVEMENT DISTRICTS

Sec.
36-43-1. Short title.
36-43-2. Legislative purpose.
36-43-3. Definitions.
36-43-4. Powers of municipalities with respect to districts generally.
36-43-5. Adoption of district plan.
36-43-6. Financing of districts.
36-43-7. Segregation of funds.
36-43-8. Design and rehabilitation standards.
36-43-9. Termination of districts.

Cross references. — Revitalizations of central business districts, § 12-3-56.

36-43-1. Short title.

This chapter shall be known and may be cited as the "City Business Improvement District Act." (Ga. L. 1981, p. 4531, § 1.)

36-43-2. Legislative purpose.

The General Assembly finds that many business districts within large cities in this state are in an economically depressed condition and that this condition adversely affects the economic and general well-being of the people of such large cities of the state. It is further found and declared that the establishment of city business improvement districts is an effective means for restoring and promoting commercial and other business activity within such business districts. (Ga. L. 1981, p. 4531, § 3.)

Cross references. — Clearance and rehabilitation of blighted areas, T. 8, C. 4.

36-43-3. Definitions.

As used in this chapter, the term:

(1) "District" means a city business improvement district established pursuant to this chapter.

(2) "District plan" or "plan" means a proposal adopted by ordinance which includes all of the following:

(A) A map of the district;

(B) A description of the boundaries of the district proposed for creation or extension, such description to be sufficient to identify

the lands included, the present and proposed uses of these lands, the supplemental services to be provided within the district, the maximum millage to be levied for providing supplemental services, the proposed time for implementation and completion of the plan, any design and rehabilitation standards which may be mandated for buildings located within each district, and any rules and regulations applicable to the district. Boundaries of any such district shall not include land on which is located telephone central office and switching facilities serving an area exceeding the boundaries of the district; and

(C) Any other item required to be incorporated therein by the governing authority.

(3) "Municipality" means any municipal corporation located wholly within this state.

(4) "Supplemental services" means those services provided for the improvement and promotion of the district, including, but not limited to, advertising, promotion, sanitation, security, and business recruitment and development.

(5) "Taxpayer" means any entity or person paying ad valorem taxes on real or personal property, whether on one or more businesses or one or more parcels of property within a district. (Ga. L. 1981, p. 4531, § 2; Ga. L. 1988, p. 539, § 1.)

36-43-4. Powers of municipalities with respect to districts generally.

Upon the establishment of any city business improvement district pursuant to this chapter, the governing authority of any municipality to which this chapter is applicable shall have authority to exercise the following powers with respect to each such district, subject to this chapter:

(1) To adopt a district plan for the provision of supplemental services to the district and to adopt budgets for the implementation of such supplemental services;

(2) To fix and levy annually a millage upon real and personal property within the district, to make such assessments liens upon the properties, and to enforce such liens in the same manner as other city taxes;

(3) To provide supplemental services or to contract with nonprofit corporations or to contract with downtown development authorities established pursuant to Chapter 42 of this title for all or part of the supplemental services required to implement the plan;

(4) To mandate design and rehabilitation standards for buildings located within the district subject to any existing or established historic preservation requirements or ordinances; and

(5) To levy and collect a surcharge on existing business license and occupation taxes upon businesses and occupations within the district and to enforce liens for nonpayment of said surcharges in the same manner as other city taxes. (Ga. L. 1981, p. 4531, § 4; Ga. L. 1990, p. 1348, § 1; Ga. L. 1992, p. 2533, § 6.)

36-43-5. Adoption of district plan.

The governing authority of any municipality to which this chapter is applicable may create city business improvement districts by the adoption of district plans, as follows:

(1) No such plan may be adopted except upon a written petition signed and acknowledged by either:

(A) At least 51 percent of the municipal taxpayers (as shown by the most recent list of taxpayers billed by the municipality) of the district proposed for creation or extension; or

(B) Municipal taxpayers owning at least 51 percent (by assessed value as shown by the most recent assessment rolls of the municipality) of the taxable property subject to ad valorem real and personal property taxation in the district;

(2) Such petition must be accompanied by a proposed district plan, to include a budget, a formula for imposing assessments on the taxpayers within the district, and design and rehabilitation standards, if desired;

(3) The petition shall be presented to the governing authority of the municipality, which shall refer it to the appropriate municipal departments for review of its sufficiency, reasonableness of assessments, and financial feasibility of the plan. These departments shall submit to the governing authority reports which shall approve of, disapprove of, or give qualified approval with modifications to the district plan, with reasons therefor. The governing authority shall hold a public hearing on the issue of whether such district should be created, provided that notice of the hearing shall be placed in a newspaper of general circulation in the community at least ten days prior to the date of the hearing. The governing authority may approve, approve with modifications, or disapprove the plan; and

(4) Any district plan thus adopted may be amended from time to time or rescinded or its budget may be revised by ordinance. (Ga. L. 1981, p. 4531, § 5; Ga. L. 1992, p. 2533, § 6.)

36-43-6. Financing of districts.

The expense incurred in the provision of supplemental services within a district shall be financed in accordance with the district plan upon which the establishment or extension of the district was based, provided that the cost of supplemental services shall not include the cost to the district of services performed by the municipality on a city-wide basis. Any property tax charges or business license fee and occupation tax surcharges shall be levied and collected in the same manner, at the same time, and by the same officers as other city taxes and assessments. (Ga. L. 1981, p. 4531, § 6; Ga. L. 1990, p. 1348, § 2; Ga. L. 1992, p. 2533, § 6.)

36-43-7. Segregation of funds.

No charges assessed and collected by a municipality pursuant to this chapter shall be spent for any purpose not authorized by the district plan of the district where such charges were assessed and collected, except for such costs as may be attributed to the billing and collection of such charges. (Ga. L. 1981, p. 4531, § 7.)

36-43-8. Design and rehabilitation standards.

Upon the establishment of any district pursuant to this chapter, the governing authority of any municipality to which this chapter is applicable may mandate design and rehabilitation standards for buildings within districts if it finds that such standards are necessary to prevent or eliminate blight, to establish and improve property values, and to foster economic development within districts. The governing authority may establish deadlines for compliance with these standards and may provide for their enforcement. (Ga. L. 1981, p. 4531, § 8.)

Cross references. — Standards and requirements for construction, alteration and other modifications of buildings generally, T. 8, C. 2. Clearance and rehabilitation of blighted areas, T. 8, C. 4.

36-43-9. Termination of districts.

Any district which is created or renewed pursuant to Code Section 36-43-5 shall terminate and cease to exist on a date specific no less than five years and no more than ten years from the date of its creation or renewal by ordinance. (Ga. L. 1981, p. 4531, § 9; Ga. L. 1998, p. 1209, § 13.)

CHAPTER 44

REDEVELOPMENT POWERS

Sec.
36-44-1. Short title.
36-44-2. Legislative findings and purpose.
36-44-3. Definitions.
36-44-4. Local legislative bodies serving as redevelopment agency; common redevelopment agency.
36-44-5. Power of political subdivision.
36-44-6. Delegation of powers; limitations on delegation.
36-44-7. Approval of redevelopment plans.
36-44-8. Creation and implementation of tax allocation districts.
36-44-9. Computing tax allocation increments; property tax included; use of tax funds.
36-44-10. Determination of tax allocation increment base of tax allocation district; annual notice.
36-44-11. Positive tax allocation increments.
36-44-12. Termination of tax allocation districts.
36-44-13. Payment of redevelopment costs.
36-44-14. Issuance of tax allocation bonds; authorization of tax allocation notes and other obligations; increasing security and marketability amount; certificate of validation; interest; redevelopment cost anticipation notes.
36-44-15. Determining tax millage rate; no freeze to ad valorem tax millage.
36-44-16. Loans for financing redevelopment costs.
36-44-17. Limitation on creation of tax allocation district.
36-44-18. Application of Urban Redevelopment Law.
36-44-19. Contracting with private individuals or entities.
36-44-20. Requirement of insufficiency.
36-44-21. Public employees and officials prohibited from holding interest disclosures; voidability of prohibited transactions; misconduct in office.
36-44-22. Approval of local law; expansion of authorities by localities prohibited.
36-44-23. Cumulative and supplemental powers.

Cross references. — Housing, T. 8, C. 3. Clearance and rehabilitation of blighted areas, § 8-4-1 et seq.

Editor's notes. — Ga. L. 2009, p. 158, § 2/HB 63, effective April 22, 2009, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 36-44-1 through 36-44-23, relating to redevelopment powers, and was based on Ga. L. 1985, p. 1360, § 1 and Ga. L. 1986, p. 10, § 36; Ga. L. 1987, p. 967, § 1; Ga. L. 1989, p. 1398, § 1; Ga. L. 1992, p. 2533, §§ 7-10; Ga. L. 1993, p. 91, § 36; Ga. L. 1998, p. 1209, §§ 1-12; Ga. L. 2001, p. 304, §§ 1-3; Ga. L. 2001, p. 1051, §§ 1-3; Ga. L. 2004, p. 886, §§ 1-4; Ga. L. 2006, p. 39, § 21/HB 1313; Ga. L. 2006, p. 857, §§ 1-7/HB 1361; Ga. L. 2009, p. 8, § 36/SB 46.

36-44-1. Short title.

This chapter shall be known and may be cited as the "Redevelopment Powers Law." (Code 1981, § 36-44-1, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

Cross references. — PILOT restriction, § 36-80-16.1.

36-44-2. Legislative findings and purpose.

It is found and declared that economically and socially depressed areas exist within counties and municipalities of this state and that these areas contribute to or cause unemployment, limit the tax resources of counties and municipalities, and create a greater demand for governmental services and, in general, have a deleterious effect upon the public health, safety, morals, and welfare. It is, therefore, in the public interest that such areas be redeveloped to the maximum extent practicable to improve economic and social conditions therein in order to abate or eliminate such deleterious effects. To encourage such redevelopment, it is essential that the counties and municipalities of this state have additional powers to form a more effective partnership with private enterprise to overcome economic limitations that have previously impeded or prohibited redevelopment of such areas. It is the purpose of this chapter, therefore, to grant such additional powers to the counties and municipalities of this state, and it is the intention of the General Assembly that this chapter be liberally construed to carry out such purpose. (Code 1981, § 36-44-2, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-3. Definitions.

As used in this chapter, the term:

(1) "Ad valorem property taxes" means all ad valorem property taxes levied by each political subdivision and each county and independent board of education consenting to the inclusion of that board of education's property taxes as being applicable to a tax allocation district as provided by Code Section 36-44-9, except:

(A) Those ad valorem property taxes levied to repay bonded indebtedness;

(B) Unless otherwise provided in the resolution creating such district, those ad valorem property taxes levied on personal property or on motor vehicles; and

(C) Unless otherwise provided in the resolution creating such district, those ad valorem property taxes levied on the assessed value of property owned by public utilities and railroad companies, as determined pursuant to the provisions of Chapter 5 of Title 48.

(2) "Area of operation" means, in the case of a municipality or its redevelopment agency, the territory lying within the corporate limits of such municipality; in the case of a county or its redevelopment

agency, the territory lying within the unincorporated area of the county; and, in the case of a consolidated government or its redevelopment agency, the area lying within the territorial boundaries of the consolidated government. "Area of operation" may also mean the combined areas of operation of political subdivisions which participate in the creation of a common redevelopment agency to serve such participating political subdivisions as provided in subsection (d) of Code Section 36-44-4.

(3) "Local legislative body" means the official or body in which the legislative powers of a political subdivision are vested.

(4) "Political subdivision" means any county, municipality, or consolidated government of this state.

(5) "Redevelopment" means any activity, project, or service necessary or incidental to achieving the development or revitalization of a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan or the preservation or improvement of historical or natural assets within a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan. Without limiting the generality of the foregoing, redevelopment may include any one or more of the following:

(A) The construction of any building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;

(B) The renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of any existing building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;

(C) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public or private housing;

(D) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public works or other public facilities necessary or incidental to the provision of governmental services;

(E) The identification, preservation, renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or restoration of buildings or sites which are of historical significance;

(F) The preservation, protection, renovation, rehabilitation, restoration, alteration, improvement, maintenance, and creation of open spaces, green spaces, or recreational facilities;

(G) The construction, installation, preservation, renovation, rehabilitation, reconstruction, restoration, alteration, improvement, and maintenance of public art and arts and cultural facilities;

(H) The development, construction, reconstruction, repair, demolition, alteration, or expansion of structures, equipment, and facilities for mass transit;

(I) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of telecommunication infrastructure;

(J) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of facilities for the improvement of pedestrian access and safety;

(K) Improving or increasing the value of property; and

(L) The acquisition and retention or acquisition and disposition of property for redevelopment purposes or the use for redevelopment purposes of property already owned by a political subdivision or any agency or instrumentality thereof.

(6) "Redevelopment agency" means the local legislative body of a political subdivision or a public body corporate and politic created as the redevelopment agency of the political subdivision or an existing public body corporate and politic designated as the redevelopment agency of the political subdivision pursuant to Code Section 36-44-4.

(7) "Redevelopment area" means an urbanized area as determined by current data from the U. S. Bureau of the Census or an area presently served by sewer that qualifies as a "blighted or distressed area," a "deteriorating area," or an "area with inadequate infrastructure," as follows:

(A) A "blighted or distressed area" is an area that is experiencing one or more conditions of blight as evidenced by:

(i) The presence of structures, buildings, or improvements that by reason of dilapidation; deterioration; age; obsolescence; inadequate provision for ventilation, light, air, sanitation, or open space; overcrowding; conditions which endanger life or property by fire or other causes; or any combination of such factors, are conducive to ill health, transmission of disease, infant mortality, high unemployment, juvenile delinquency, or crime and are detrimental to the public health, safety, morals, or welfare;

(ii) The presence of a predominant number of substandard, vacant, deteriorated, or deteriorating structures; the predominance of a defective or inadequate street layout or transportation

facilities; or faulty lot layout in relation to size, accessibility, or usefulness;

(iii) Evidence of pervasive poverty, defined as being greater than 10 percent of the population in the area as determined by current data from the United States Bureau of the Census, and an unemployment rate that is 10 percent higher than the state average;

(iv) Adverse effects of airport or transportation related noise or environmental contamination or degradation or other adverse environmental factors that the political subdivision has determined to be impairing the redevelopment of the area; or

(v) The existence of conditions through any combination of the foregoing that substantially impair the sound growth of the community and retard the provision of housing accommodations or employment opportunities;

(B) A "deteriorating area" is an area that is experiencing physical or economic decline or stagnation as evidenced by two or more of the following:

(i) The presence of a substantial number of structures or buildings that are 40 years old or older and have no historic significance;

(ii) High commercial or residential vacancies compared to the political subdivision as a whole;

(iii) The predominance of structures or buildings of relatively low value compared to the value of structures or buildings in the surrounding vicinity or significantly slower growth in the property tax digest than is occurring in the political subdivision as a whole;

(iv) Declining or stagnant rents or sales prices compared to the political subdivision as a whole;

(v) In areas where housing exists at present or is determined by the political subdivision to be appropriate after redevelopment, there exists a shortage of safe, decent housing that is not substandard and that is affordable for persons of low and moderate income; or

(vi) Deteriorating or inadequate utility, transportation, or transit infrastructure; and

(C) An "area with inadequate infrastructure" means an area characterized by:

(i) Deteriorating or inadequate parking, roadways, bridges, pedestrian access, or public transportation or transit facilities

incapable of handling the volume of traffic into or through the area, either at present or following redevelopment; or

(ii) Deteriorating or inadequate utility infrastructure either at present or following redevelopment.

(8) "Redevelopment costs" means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred to achieve the redevelopment of a redevelopment area or any portion thereof designated by a redevelopment plan or any expenditures made to carry out or exercise any powers granted by this chapter. Without limiting the generality of the foregoing, redevelopment costs may include any one or more of the following:

(A) Capital costs, including the costs incurred or estimated to be incurred for the construction of public works or improvements, new buildings, structures, and fixtures, including facilities owned or operated by school districts and systems; the renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of existing buildings, structures, and fixtures, including facilities owned or operated by school districts and systems; the acquisition of equipment; and the clearing and grading of land;

(B) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued under this chapter occurring during the estimated period of construction of any project with respect to which any capital costs within the meaning of subparagraph (A) of this paragraph are financed in whole or in part by such obligations and for a period not to exceed 42 months after completion of any such construction and including reasonable reserves related thereto and all principal and interest paid to holders of evidences of indebtedness issued to pay for other redevelopment costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(C) Professional service costs, including those costs incurred for architectural, planning, engineering, financial, marketing, and legal advice and services;

(D) Imputed administrative costs, including reasonable charges for the time spent by public employees in connection with the implementation of a redevelopment plan;

(E) Relocation costs as authorized by a redevelopment plan for persons or businesses displaced by the implementation of a redevelopment plan, including but not limited to those relocation payments made following condemnation under Chapter 4 of Title

22, "The Georgia Relocation Assistance and Land Acquisition Policy Act";

(F) Organizational costs, including the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the creation and implementation of redevelopment plans;

(G) Payments to a political subdivision or board of education in lieu of taxes to compensate for any loss of tax revenues or for any capital costs incurred because of redevelopment activity; provided, however, that any such payments to a political subdivision or board of education shall not exceed in any year the amount of the contribution to the tax allocation increment in that year by such political subdivision or board of education; and

(H) Real property assembly costs.

(9) "Redevelopment plan" means a written plan of redevelopment for a redevelopment area or a designated portion thereof which:

(A) Specifies the boundaries of the proposed redevelopment area;

(B) Explains the grounds for a finding by the local legislative body that the redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan or that the redevelopment area includes one or more natural, historical, or cultural assets which have not been adequately preserved, protected, or improved and such asset or assets would not reasonably be anticipated to be adequately preserved, protected, or improved without the approval of the redevelopment plan;

(C) Explains the proposed uses after redevelopment of real property within the redevelopment area;

(D) Describes any redevelopment projects within the redevelopment area proposed to be authorized by the redevelopment plan, estimates the cost thereof, and explains the proposed method of financing such projects;

(E) Describes any contracts, agreements, or other instruments creating an obligation for more than one year which are proposed to be entered into by the political subdivision or its redevelopment agency or both for the purpose of implementing the redevelopment plan;

(F) Describes the type of relocation payments proposed to be authorized by the redevelopment plan;

(G) Includes a statement that the proposed redevelopment plan conforms with the local comprehensive plan, master plan, zoning ordinance, and building codes of the political subdivision or explains any exceptions thereto;

(H) Estimates redevelopment costs to be incurred or made during the course of implementing the redevelopment plan;

(I) Recites the last known assessed valuation of the redevelopment area and the estimated assessed valuation after redevelopment;

(J) Provides that property which is to be redeveloped under the plan and which is either designated as a historic property under Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act," or is listed on or has been determined by any federal agency to be eligible for listing on the National Register of Historic Places will not be:

(i) Substantially altered in any way inconsistent with technical standards for rehabilitation; or

(ii) Demolished unless feasibility for reuse has been evaluated based on technical standards for the review of historic preservation projects,

which technical standards for rehabilitation and review shall be those used by the state historic preservation officer, although nothing in this subparagraph shall be construed to require approval of a redevelopment plan or any part thereof by the state historic preservation officer;

(K) Specifies the proposed effective date for the creation of the tax allocation district and the proposed termination date;

(L) Contains a map specifying the boundaries of the proposed tax allocation district and showing existing uses and conditions of real property in the proposed tax allocation district;

(M) Specifies the estimated tax allocation increment base of the proposed tax allocation district;

(N) Specifies ad valorem property taxes for computing tax allocation increments determined in accordance with Code Section 36-44-9 and supported by any resolution required under paragraph (3) of Code Section 36-44-8;

(O) Specifies the amount of the proposed tax allocation bond issue or issues and the term and assumed rate of interest applicable thereto;

(P) Estimates positive tax allocation increments for the period covered by the term of the proposed tax allocation bonds;

(Q) Specifies the property proposed to be pledged for payment or security for payment of tax allocation bonds which property may include positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, subject to the limitations of Code Sections 36-44-9 and 36-44-20;

(R) If the plan proposes to include in the tax allocation increment ad valorem taxes levied by a board of education, the plan shall contain a school system impact analysis addressing the financial and operational impact on the school system of the proposed redevelopment, including but not limited to an estimate of the number of net new public school students that could be anticipated as redevelopment occurs; the location of school facilities within the proposed redevelopment area; an estimate of educational special purpose local option sales taxes projected to be generated by the proposed redevelopment, if any; and a projection of the average value of residential properties resulting from redevelopment compared to current property values in the redevelopment area; and

(S) Includes such other information as may be required by resolution of the political subdivision whose area of operation includes the proposed redevelopment area.

(10) "Resolution" means a resolution or ordinance by which a local legislative body takes official legislative action and any duly-adopted amendment thereto.

(11) "Special fund" means the fund provided for in subsection (c) of Code Section 36-44-11.

(12) "Tax allocation bonds" means one or more series of bonds, notes, or other obligations issued by a political subdivision to finance, wholly or partly, redevelopment costs within a tax allocation district and which are issued on the basis of pledging for the payment or security for payment of such bonds positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, as determined by the political subdivision subject to the limitations of Code Sections 36-44-9 and 36-44-20. Tax allocation bonds shall not constitute debt within the meaning of Article IX, Section V of the Constitution.

(13) "Tax allocation district" means a contiguous geographic area within a redevelopment area which is defined and created by resolution of the local legislative body of a political subdivision pursuant to

subparagraph (B) of paragraph (3) of Code Section 36-44-8 for the purpose of issuing tax allocation bonds to finance, wholly or partly, redevelopment costs within the area.

(14) "Tax allocation increment" means that amount obtained by multiplying the total ad valorem property taxes, determined as provided in Code Section 36-44-9, levied within a tax allocation district in any year by a fraction having a numerator equal to that year's taxable value of all taxable property subject to ad valorem property taxes within the tax allocation district minus the tax allocation increment base and a denominator equal to that year's taxable value of all taxable property subject to ad valorem property taxes within the tax allocation district. In any year, a tax allocation increment is "positive" if the tax allocation increment base is less than that year's taxable value of all taxable property subject to ad valorem property taxes and "negative" if such base exceeds such taxable value.

(15) "Tax allocation increment base" means the taxable value of all taxable property subject to ad valorem property taxes, as certified by the state revenue commissioner, located within a tax allocation district on the effective date such district is created pursuant to Code Section 36-44-8.

(16) "Taxable property" means all real and personal property subject to ad valorem taxation by a political subdivision, including property subject to local ad valorem taxation for educational purposes.

(17) "Taxable value" means the current assessed value of taxable property as shown on the tax digest of the county in which the property is located. (Code 1981, § 36-44-3, enacted by Ga. L. 2009, p. 158, § 2/HB 63; Ga. L. 2010, p. 878, § 36/HB 1387; Ga. L. 2011, p. 752, § 36/HB 142; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (8)(E) and paragraph (10).

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised language in division (7)(A)(i).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in division (7)(A)(iii).

36-44-4. Local legislative bodies serving as redevelopment agency; common redevelopment agency.

(a) As an alternative to the creation of a redevelopment agency provided for by subsections (b) through (f) of this Code section, the local legislative body of a political subdivision, by resolution, may designate itself as its respective redevelopment agency and may exercise, within

its respective area of operation, the redevelopment powers provided by this chapter.

(b) The local legislative body of a political subdivision may create a public body corporate and politic to serve as its redevelopment agency. Any such public corporation may be created by resolution adopted by the local legislative body of the political subdivision. Such resolution may provide for the membership of the board of directors of such public corporation and their terms of office, for the powers and duties of such public corporation, and for such other matters as may reasonably be necessary and convenient for the creation and activation of such public corporation as the redevelopment agency of the political subdivision.

(c) In the event a political subdivision has activated a public corporation as its "urban redevelopment agency" or designated a housing authority as its "urban redevelopment agency" pursuant to Code Sections 36-61-17 and 36-61-18 of the "Urban Redevelopment Law," the local legislative body of such political subdivision may designate such public corporation as its redevelopment agency for the purposes of this chapter. Any action taken pursuant to the authority of this subsection shall be by resolution duly adopted by the local legislative body of the political subdivision.

(d) Any county, municipality, and consolidated government, or any combination of such political subdivisions, by resolution of their respective local legislative bodies, may jointly create a public corporation, or designate an existing public corporation which already exercises "redevelopment powers" under any other law, to serve as the common redevelopment agency on behalf of such political subdivisions. The membership of the board of directors and their terms of office of any such jointly created public corporation and the powers and duties of such public corporation shall be as mutually agreed upon by the local legislative bodies of the participating political subdivisions, as evidenced by a resolution duly adopted by each such local legislative body. In the event a public corporation is created or designated, as authorized in this Code section, to serve as the common redevelopment agency of two or more political subdivisions, then the area of operation of such redevelopment agency shall be the combined areas of operation of the political subdivisions jointly creating or designating such redevelopment agency.

(e) A political subdivision may participate in the creation or designation of a public corporation to serve as a common redevelopment agency as provided by subsection (d) of this Code section as well as create or designate a public corporation to serve as the redevelopment agency of the political subdivision. In such event, the members of the board of directors of the public corporation created or designated as the redevelopment agency of the political subdivision may also serve, in

accordance with the provisions of the resolution of the local legislative body of the political subdivision participating in the creation or designation of a public corporation to serve as a common redevelopment agency, as members of the board of directors of the jointly created public corporation.

(f) For purposes of redevelopment in its downtown area, any municipality may designate a downtown development authority created pursuant to Chapter 42 of this title to serve as a redevelopment agency. Such designation shall not affect any other redevelopment agency that may exist as a part of the municipality. The area of operation of any downtown development agency designated as a redevelopment agency pursuant to this subsection shall not exceed the area of operation of the downtown development authority established pursuant to Chapter 42 of this title. (Code 1981, § 36-44-4, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-5. Power of political subdivision.

(a) Subject to the limitation of subsection (b) of this Code section, a political subdivision may exercise any powers necessary or convenient to carry out the purposes of this chapter, including, but not limited to, the power to:

(1) Describe the boundaries of one or more redevelopment areas within its area of operation, but any redevelopment area so described shall conform to the definition of a redevelopment area provided by paragraph (7) of Code Section 36-44-3;

(2) Cause redevelopment plans to be prepared, to approve by resolution the plans, and to implement the provisions and effectuate the purposes of the plans;

(3) Create within redevelopment areas tax allocation districts and define the boundaries thereof or designate an entire redevelopment area as a tax allocation district;

(4) Define the boundaries of portions of a redevelopment area or an entire redevelopment area for the implementation of redevelopment plans other than plans calling for the creation of tax allocation districts;

(5) Issue tax allocation bonds;

(6) Deposit moneys into and disburse moneys from the special fund of any tax allocation district;

(7) Enter into and execute any contracts, leases, mortgages, or other agreements, including agreements with bondholders or lenders, determined by the local legislative body to be necessary or

convenient to implement the provisions and effectuate the purposes of redevelopment plans. The contracts or agreements may include conditions, restrictions, or covenants which either run with the land or otherwise regulate the use of land;

(8) Acquire and retain or acquire and dispose of property or interests therein for redevelopment purposes or use or dispose of property or interests therein presently owned by the political subdivision for redevelopment purposes; and any disposition of such property or interests therein may be by public or private sale or lease; and

(9) Exercise, for the purposes of this chapter, any powers conferred upon political subdivisions by Chapter 61 of this title, the "Urban Redevelopment Law."

(b) The powers granted to political subdivisions by subsection (a) of this Code section and by this chapter and any powers delegated to a redevelopment agency pursuant to Code Section 36-44-6 may be exercised only for the purpose of adopting and implementing redevelopment plans, but this limitation shall not be construed to interfere with the exercise of any power now or hereafter possessed by a political subdivision which is granted by any other law. (Code 1981, § 36-44-5, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-6. Delegation of powers; limitations on delegation.

(a) Subject to the limitations of subsection (b) of this Code section, the local legislative body of a political subdivision, by resolution, may delegate any of its redevelopment powers to its redevelopment agency created or designated pursuant to Code Section 36-44-4. The local legislative body shall have authority to delegate some or all such powers in such manner and pursuant to such terms and conditions as the local legislative body shall provide by resolution. Any such resolution shall specify any powers delegated to a redevelopment agency, and such resolution may be amended, modified, or repealed by the local legislative body adopting it.

(b) Any delegation of redevelopment powers pursuant to the authority of subsection (a) of this Code section shall be limited by the following requirements:

(1) Any redevelopment plan must be approved by resolution of the local legislative body of the political subdivision as a ccndition precedent to the implementation of said redevelopment plan, and such approval shall be subject to the requirements of Code Section 36-44-7;

(2) The boundaries of any redevelopment area must be described by resolution of the local legislative body of the political subdivision;

(3) A tax allocation district must be created by resolution of the local legislative body of the political subdivision;

(4) The issuance of any tax allocation bonds shall be by resolution of the local legislative body of the political subdivision;

(5) The power of eminent domain may only be exercised under this chapter by the local legislative body of a political subdivision; and

(6) A local legislative body may not delegate to a redevelopment agency created under subsection (b), (c), (d), or (e) of Code Section 36-44-4 any urban redevelopment project powers except those which may be conferred on an urban redevelopment agency under Code Section 36-61-17 of the "Urban Redevelopment Law." (Code 1981, § 36-44-6, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2009, p. 8, § 36, irreconcilably conflicted with and was treated as superseded by Ga. L. 2009, p. 158, § 2. See County of Butts v. Strahan, 151 Ga. 417 (1921).

36-44-7. Approval of redevelopment plans.

(a) A redevelopment plan may be proposed by the redevelopment agency of a political subdivision, but such plan may not be implemented until it is approved by the adoption of a resolution of the local legislative body of the political subdivision as provided in this chapter.

(b) When a proposed redevelopment plan is prepared, it shall be submitted by the redevelopment agency to the local legislative body. Within the 60 day period after the plan is submitted, the local legislative body shall hold at least one public hearing on the proposed redevelopment plan. The local legislative body shall cause the time, date, place, and purpose of each such public hearing to be advertised in one or more newspapers of general circulation within the area of operation of the political subdivision at least once during a period of five days immediately preceding the date of each public hearing.

(c) Within 45 days after completing the public hearings required by subsection (b) of this Code section, the local legislative body of the political subdivision shall schedule and hold a meeting of the local legislative body for the purpose of considering the approval of the redevelopment plan. The local legislative body shall cause the date, time, place, and purpose of such meeting to be advertised in one or more newspapers of general circulation within the area of operation of the political subdivision at least once during a period of five days immediately preceding the date of such meeting. At such meeting the redevelopment plan shall be approved as submitted, amended and approved, or rejected and returned to the redevelopment agency for further consideration. Any redevelopment plan rejected by the local legislative body

shall be returned to the redevelopment agency and shall be subject to the public hearing requirements of subsection (b) of this Code section if it is again submitted to the local legislative body for approval, either in the same or amended form.

(d) Once approved by the local legislative body, a redevelopment plan may be amended only by the local legislative body of the political subdivision. The local legislative body shall cause the date, time, place, and purpose of any meeting of the local legislative body at which an amendment to a redevelopment plan is to be considered to be advertised in the same manner as prescribed by subsection (c) of this Code section for a meeting to consider the adoption of a redevelopment plan. (Code 1981, § 36-44-7, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-8. Creation and implementation of tax allocation districts.

In order to create and carry out the purposes of a tax allocation district, the following steps are required:

(1) Preparation by the redevelopment agency of a redevelopment plan for the proposed tax allocation district and its submission for consent to the political subdivision or board of education required to consent, if the plan proposes to include in the tax allocation increment ad valorem property taxes levied by a political subdivision or board of education required to consent to such inclusion under Code Section 36-44-9, or if the plan proposes to pledge for payment or security for payment of tax allocation bonds and other redevelopment costs the general funds of a county required to consent to such inclusion under Code Section 36-44-9;

(2) Submission of the redevelopment plan to the local legislative body of the political subdivision whose area of operation will include the tax allocation district;

(3) Adoption by the local legislative body of a resolution approving the redevelopment plan and which:

(A) Describes the boundaries of the tax allocation district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included. The boundaries shall include only those whole units of property assessed for ad valorem property tax purposes;

(B) Creates the district on December 31 following the adoption of the resolution or on December 31 of a subsequent year as determined by the local legislative body;

(C) Assigns a name to the district for identification purposes. The first district created shall be known as "Tax Allocation District

Number 1," followed by the name of the political subdivision within whose area of operation the district is located;

(D) Specifies the estimated tax allocation increment base;

(E) Specifies ad valorem property taxes to be used for computing tax allocation increments;

(F) Specifies the property proposed to be pledged for payment or security for payment of tax allocation bonds which property may include positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, as determined by the political subdivision subject to the limitations of Code Sections 36-44-9 and 36-44-20; and

(G) Contains findings that:

(i) The redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan or includes one or more natural, historical, or cultural assets which have not been adequately preserved or protected and such asset or assets would not reasonably be anticipated to be adequately preserved, protected, or improved without the approval of the redevelopment plan; and

(ii) The improvement of the area is likely to enhance the value of a substantial portion of the other real property in the district.

If any information required to be included in the resolution approving the redevelopment plan under subparagraphs (A) through (G) of this paragraph is contained in the redevelopment plan, then the resolution approving the redevelopment plan may incorporate by reference that portion of the redevelopment plan containing said information; and

(4) A certified copy of any resolution giving the consent required under paragraph (1) of this Code section must be submitted to the local legislative body of the political subdivision whose area of operation will include the tax allocation district prior to inclusion of such ad valorem property taxes or general funds in calculation of the tax allocation increment. (Code 1981, § 36-44-8, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-9. Computing tax allocation increments; property tax included; use of tax funds.

(a) When a tax allocation district is created within the area of operation of a municipality by the local legislative body of such

municipality, property taxes for computing tax allocation increments shall be based on all ad valorem property taxes levied by the municipality. If the municipality has an independent school system, ad valorem property taxes levied for educational purposes by the municipality shall be included in computing the tax allocation increments if the local legislative body of the municipality is empowered to make the determination of the municipal ad valorem tax millage rate for educational purposes. If the board of education of the independent school system is empowered to set the ad valorem tax millage rate for educational purposes and the local legislative body of the municipality does not have the authority to modify such rate set by the board of education, the tax allocation increment shall not be computed on the basis of municipal taxes for educational purposes unless the board of education of the independent school system consents, by resolution duly adopted by said board of education, to the inclusion of educational ad valorem property taxes as a basis for computing tax allocation increments.

(b) County ad valorem property taxes may be included in the computation of tax allocation increments of a municipal tax allocation district if the local legislative body of the county consents to such inclusion by resolution duly adopted by said local legislative body. For those municipalities which do not have an independent school system, ad valorem property taxes levied for county school district purposes may be included in the computation of tax allocation increments of a municipal tax allocation district if the county board of education or the local legislative body of the county, whichever is authorized to establish the ad valorem tax millage rate for educational purposes, consents to such inclusion by resolution duly adopted by said board of education or local legislative body, respectively.

(c) When a tax allocation district is created within the area of operation of a county by the local legislative body of the county, property taxes for computing tax allocation increments shall be based on all county ad valorem property taxes levied for county governmental purposes. Ad valorem property taxes levied for county school district purposes may be included in the computation of tax allocation increments for a county tax allocation district if the board of education of the county school district or the local legislative body of the county, whichever is authorized to establish the ad valorem tax millage rate for educational purposes, consents to such inclusion by resolution duly adopted by said board of education or local legislative body, respectively.

(d) When a tax allocation district is created within the area of operation of a consolidated government by the local legislative body of the consolidated government, property taxes for computing tax allocation increments shall be based on all consolidated government ad

valorem property taxes levied for consolidated government purposes. Ad valorem property taxes levied for school district purposes within the boundaries of the consolidated government may be included in the computation of tax allocation increments for a consolidated government tax allocation district if the board of education of such school district or the local legislative body of the consolidated government, whichever is authorized to establish the ad valorem tax millage rate for educational purposes within the school district, consents to such inclusion by resolution duly adopted by said board of education or local legislative body, respectively.

(e) The resolution of any county, municipality, consolidated government, or board of education consenting to the inclusion of ad valorem property taxes in the computation of tax increments shall not specify the inclusion of any ad valorem property taxes not specified in the resolution creating the tax allocation district.

(f) A county may pledge all or part of county general funds derived from a municipal tax allocation district for payment or security of payment of tax allocation bonds issued by the municipality and for payment of other redevelopment costs of the tax allocation district if the local legislative body of the county consents to the use of such general funds by resolution duly adopted by said local legislative body.

(g) Any consent by a local board of education to the inclusion of educational ad valorem property taxes as a basis for computing tax allocation increments and any authorization to use such funds for such purposes that was approved before January 1, 2009, and not rescinded or repealed prior to April 22, 2009, is ratified and confirmed pursuant to the authority granted by Article IX, Section II, Paragraph VII of the Constitution, as amended by a resolution ratified at the November, 2008 general election, Ga. L. 2008, p. 777, to authorize the use of county, municipal, and school tax funds, or any combination thereof, for redevelopment purposes and programs notwithstanding Article VIII, Section VI or any other provision of the Constitution and regardless of whether any county, municipality, or local board of education approved the use of such tax funds for such purposes and programs before or after January 1, 2009. (Code 1981, § 36-44-9, enacted by Ga. L. 2009, p. 158, § 2/HB 63; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (e).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "prior to April 22, 2009," was substituted for "prior to the effective date of this Code section" in subsection (g).

36-44-10. Determination of tax allocation increment base of tax allocation district; annual notice.

(a) No later than the effective date of the creation of the tax allocation district, the redevelopment agency shall apply, in writing, to the state revenue commissioner for a determination of the tax allocation increment base of the tax allocation district. Within a reasonable time, and not exceeding 60 days after the effective date of the creation of the tax allocation district, the state revenue commissioner shall certify such tax allocation increment base, as of the effective date of the creation of the tax allocation district, to the redevelopment agency, and such certification, unless amended pursuant to subsection (b) of this Code section, shall constitute the tax allocation increment base of the tax allocation district.

(b) If the local legislative body of a political subdivision adopts an amendment to the resolution which created a tax allocation district and such amendment changes the boundaries of that tax allocation district so as to cause additional redevelopment costs for which tax allocation increments may be received by the political subdivision, the tax allocation increment base for the revised or amended district shall be redetermined pursuant to subsection (a) of this Code section as of the effective date of such amendment. The tax allocation increment base as redetermined under this subsection is effective for the purposes of this chapter only if it exceeds the original tax allocation increment base determined under subsection (a) of this Code section.

(c) It is a rebuttable presumption that any property within a tax allocation district acquired or leased as lessee by the political subdivision, or any agency or instrumentality thereof, within one year immediately preceding the date of the creation of the district was so acquired or leased in contemplation of the creation of the district. The presumption may be rebutted by the political subdivision with proof that the property was so leased or acquired primarily for a purpose other than to reduce the tax allocation increment base. If the presumption is not rebutted, in determining the tax allocation increment base of the district, but for no other purpose, the taxable status of the property shall be determined as though such lease or acquisition had not occurred.

(d) For each political subdivision whose area of operation includes a tax allocation district, the county board of tax assessors, joint city-county board of tax assessors, or board of tax assessors for a consolidated government, as the case may be, shall identify upon the tax digests of the political subdivision those parcels of property which are within each existing tax allocation district, specifying the name of each district. A similar notation shall appear on tax digests submitted

to the state revenue commissioner pursuant to Code Section 48-5-302, relative to the submission of tax digests to the state revenue commissioner.

(e) The county board of tax assessors, joint city-county board of tax assessors, or consolidated government board of tax assessors shall annually give notice to the county tax collector or tax commissioner and to the municipal official responsible for collecting municipal ad valorem property taxes as to both the current taxable value of property subject to ad valorem property taxes within each tax allocation district and the tax allocation increment base. The notice shall also explain that any taxes collected as a result of increases in the tax allocation increment base constitute tax allocation increments and shall be paid to the appropriate political subdivision as provided by subsection (b) of Code Section 36-44-11. (Code 1981, § 36-44-10, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-11. Positive tax allocation increments.

(a) Positive tax allocation increments of a tax allocation district shall be allocated to the political subdivision which created the district for each year from the effective date of the creation of the district until that time when all redevelopment costs and all tax allocation bonds of the district have been paid or provided for, subject to any agreement with bondholders. General funds derived from the tax allocation district which have been pledged for payment or security for payment of tax allocation bonds and other redevelopment costs of the tax allocation district shall also be allocated to the political subdivision which created the district for each year from the effective date of the creation of the district until that time when all redevelopment costs and all tax allocation bonds have been paid or provided for, subject to any agreement with bondholders.

(b)(1) Each county tax collector or tax commissioner, municipal official responsible for collecting municipal ad valorem property taxes, or consolidated government official responsible for collecting consolidated government ad valorem property taxes shall, on the dates provided by law for the payment of taxes collected to the respective political subdivisions, pay over to the appropriate fiscal officer of each political subdivision having created a tax allocation district, out of taxes collected on behalf of such political subdivision, including but not limited to taxes collected for a political subdivision or board of education consenting, pursuant to Code Section 36-44-9, to inclusion of its ad valorem property taxes in the computation of tax allocation increments for that tax allocation district, that portion, if any, which represents positive tax allocation increments payable to such political subdivision.

(2) In addition, each county shall, upon receipt, pay over to the appropriate fiscal officer of each municipality having created a tax allocation district that portion, if any, of its general funds derived from the tax allocation district which have been pledged for payment or security for payment of tax allocation bonds and for payment of other redevelopment costs of the tax allocation district pursuant to Code Section 36-44-9.

(c) All positive tax allocation increments received for a tax allocation district shall be deposited into a special fund for the district upon receipt by the fiscal officer of the political subdivision. All general funds derived from the tax allocation district which have been pledged for payment or security for payment of tax allocation bonds and other redevelopment costs of the tax allocation district shall be deposited upon receipt into the special fund. Any lease or other contract payments made under the district's redevelopment plan shall also be deposited upon receipt into the special fund. Moneys derived from positive tax allocation increments, general fund moneys, and moneys derived from lease or other contract payments shall be accounted for separately within the special fund. Moneys shall be paid out of the fund only to pay redevelopment costs of the district or to satisfy claims of holders of tax allocation bonds issued for the district. The local legislative body shall irrevocably pledge all or a part of such special fund to the payment of the tax allocation bonds. The special fund or designated part thereof may thereafter be used only for the payment of the tax allocation bonds and interest until they have been fully paid, and a holder of said bonds shall have a lien against the special fund or said designated part thereof pledged for payment of said bonds and may either at law or in equity protect and enforce the lien. General funds derived from the tax allocation district may be used for payment of tax allocation bonds only to the extent that positive tax allocation increments and lease or other contract payments in the special fund are insufficient at any time to pay principal and interest due on such bonds. Subject to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other funds of the political subdivision. Except as provided in Code Section 36-44-20, general funds derived from the tax allocation district may be used for payment of tax allocation bonds only to the extent that positive tax allocation increments and lease or other contract payments in the special fund are insufficient at any time to pay the principal and interest due on such bonds. After all redevelopment costs and all tax allocation bonds of the district have been paid or provided for, subject to any agreement with bondholders, if there remains in the fund any moneys derived from positive tax allocation increments, they shall be paid over to each county, municipality, consolidated government, or county or independent board of education whose ad valorem property taxes were affected by the tax allocation

district in proportion to the aggregate contribution of such taxes by such political subdivision less aggregate payments to such political subdivision pursuant to subparagraph (G) of paragraph (8) of Code Section 36-44-3 and in the same manner as the most recent distribution by the county tax collector or tax commissioner, municipal official responsible for collecting municipal ad valorem property taxes, or consolidated government official responsible for collecting consolidated government ad valorem property taxes. If there remains in the fund any other moneys, they shall be paid over to each political subdivision which contributed to the fund in proportion to the respective total contribution each made to the fund. (Code 1981, § 36-44-11, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-12. Termination of tax allocation districts.

The existence of a tax allocation district shall terminate when the local legislative body, by resolution, dissolves the district, but no such resolution may be adopted until all redevelopment costs have been paid. (Code 1981, § 36-44-12, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-13. Payment of redevelopment costs.

Payment of redevelopment costs may be made by any of the following methods or any combination thereof:

(1) Payment by the political subdivision from the special fund of the tax allocation district;

(2) Payment from the general funds of a political subdivision subject to the limitations of Code Sections 36-44-9 and 36-44-20;

(3) Payment out of the proceeds of the sale of revenue bonds issued by the political subdivision pursuant to Chapter 61 of this title, the "Urban Redevelopment Law," and revenue bonds may be issued under such law for redevelopment purposes within the meaning of this chapter;

(4) Payment out of the proceeds of the sale of tax allocation bonds issued by the political subdivision under this chapter;

(5) Payment from the proceeds from any loans made to a political subdivision pursuant to the authority of Code Section 36-44-16; and

(6) Lease payments and other payments pursuant to contracts under a redevelopment plan. (Code 1981, § 36-44-13, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-14. Issuance of tax allocation bonds; authorization of tax allocation notes and other obligations; increasing security and marketability amount; certificate of validation; interest; redevelopment cost anticipation notes.

(a) Only for the purpose of paying redevelopment costs for a tax allocation district created under this chapter, the local legislative body may issue tax allocation bonds. Tax allocation bonds are declared to be negotiable instruments. Tax allocation bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(b) All tax allocation bonds, notes, and other obligations shall be authorized by resolution of the local legislative body, adopted by a majority vote of the members thereof at a regular or special meeting and without the necessity of a referendum or any electoral approval. The resolution shall state the name of the tax allocation district and the aggregate principal amount of the tax allocation bonds authorized.

(c) Tax allocation bonds, notes, or other obligations issued by a local legislative body under this chapter shall be payable solely from the property pledged, mortgaged, conveyed, assigned, hypothecated, or otherwise encumbered to secure or to pay such bonds, notes, or other obligations, which property shall be limited to real or personal property acquired pursuant to this chapter and the proceeds from any source from which redevelopment costs may be paid under Code Section 36-44-13, but subject to the limitations of Code Sections 36-44-9 and 36-44-20. Each such bond, note, or other obligation shall contain recitals as are necessary to show that it is only so payable and that it does not otherwise constitute an indebtedness or a charge against the general taxing power of the political subdivision or county or independent board of education consenting to the use of property taxes as a basis for computing tax allocation increments or consenting to the use of general funds derived from the tax allocation district.

(d) To increase the security and marketability of tax allocation bonds, notes, or other obligations, a local legislative body may:

(1) Create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom; and

(2) Make covenants and do any and all acts not inconsistent with the Constitution or this chapter as may be necessary or convenient or desirable in order additionally to secure tax allocation bonds, notes, or other obligations or tend to make them more marketable according to the best judgment of the local legislative body.

(e) Tax allocation bonds, notes, or other obligations shall bear such date or dates, shall mature at such time or times not more than 30 years from their respective dates, shall bear interest at such rate or rates which may be fixed or may fluctuate or otherwise change from time to time, shall be subject to redemption on such terms, and shall contain such other terms, provisions, covenants, assignments, and conditions as the resolution authorizing the issuance of such bonds, notes, or other obligations may permit or provide. The terms, provisions, covenants, assignments, and conditions contained in or provided or permitted by any resolution of the local legislative body authorizing the issuance of such tax allocation bonds, notes, or other obligations shall bind the members of the local legislative body then in office and their successors.

(f) The local legislative body shall have power from time to time and whenever it deems it expedient to refund any tax allocation bonds by the issuance of new tax allocation bonds, whether or not the bonds to be refunded have matured, and may issue such bonds partly to refund bonds then outstanding and partly for any other purpose permitted under this chapter. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed upon, or may be sold at such price as the local legislative body may determine and the proceeds applied to the purchase or redemption of the bonds to be refunded.

(g) Tax allocation bonds may not be issued in an amount exceeding the estimated aggregated redevelopment costs for the tax allocation district. Any limitations with respect to interest rates or any maximum interest rate or rates found in Article 3 of Chapter 82 of this title, the "Revenue Bond Law," the usury laws of this state, or any other laws of this state shall not apply to tax allocation bonds, notes, or other obligations of a local legislative body.

(h) All tax allocation bonds issued by a local legislative body under this chapter shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, the "Revenue Bond Law," except as provided in this chapter.

(i) Tax allocation bonds issued by a local legislative body may be in such form and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide.

(j) Tax allocation bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the county in which the issuing local legislative body is located may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state.

(k) In lieu of specifying the rate or rates of interest which tax allocation bonds to be issued by a local legislative body are to bear, the notice to the district attorney or the Attorney General, the notice to the public of the time, place, and date of the validation hearing, and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest, which rate may be fixed or may fluctuate or otherwise change from time to time, specified in such notices and petition and complaint or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate so specified, which rate may be fixed or may fluctuate or otherwise change from time to time; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of a local legislative body to sell such tax allocation bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

(l) The term "redevelopment costs" shall have the meaning prescribed in this chapter whenever that term is referred to in tax allocation bond resolutions of a local legislative body, in tax allocation bonds, notes, or other obligations of a local legislative body, or in notices or proceedings to validate such bonds, notes, or other obligations of a local legislative body.

(m) Subject to the limitations and procedures provided by this chapter, the agreements or instruments executed by a local legislative body may contain such provisions not inconsistent with law as shall be determined by the local legislative body.

(n) The proceeds derived from the sale of all tax allocation bonds, notes, and other obligations issued by a local legislative body shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, redevelopment costs or for the purpose of refunding any tax allocation bonds, notes, or other obligations issued in accordance with this chapter.

(o) Issuance by a local legislative body of one or more series of tax allocation bonds, notes, or other obligations for one or more purposes shall not preclude it from issuing other tax allocation bonds, notes, or other obligations in connection with the same redevelopment plan or with any other redevelopment plan; but the proceeding wherein any subsequent bonds, notes, or other obligations are issued shall recognize and protect any prior loan agreement, mortgage, deed to secure debt, trust deed, security agreement, or other agreement or instrument made for any prior issue of bonds, notes, or other obligations, unless in the resolution authorizing such prior issue the right is expressly reserved to the local legislative body to issue subsequent bonds, notes, or other

obligations on a parity with such prior issue. Once the political subdivision certifies by resolution that all tax allocation bonds contemplated by the redevelopment plan and all amendments thereto have been issued and all other redevelopment costs within a tax allocation district have been paid, all positive tax allocation increments collected within a tax allocation district shall be used to retire outstanding tax allocation bonds prior to their stated maturities, subject to any agreements made by the political subdivision with bondholders.

(p) A local legislative body shall have the power and is authorized, whenever tax allocation bonds of the local legislative body shall have been validated as provided in this chapter, to issue from time to time its notes in anticipation of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether or not the notes to be renewed have matured. The local legislative body may issue such bond anticipation notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. Such notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the local legislative body may sell such notes at public sale or at private sale. Any resolution or resolutions authorizing such notes of the local legislative body or any issue thereof may contain any provisions which the local legislative body is authorized to include in any resolution or resolutions authorizing bonds of the local legislative body to any issue thereof; and the local legislative body may include in any such notes any terms, covenants, or conditions which the local legislative body is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued. (Code 1981, § 36-44-14, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-15. Determining tax millage rate; no freeze to ad valorem tax millage.

For the purpose of fixing the tax millage rate to fund the annual budget of each political subdivision or county or independent board of education having the power to levy taxes or set ad valorem tax millage rates on property located within a tax allocation district, which has consented to the inclusion of its ad valorem property taxes for the computation of tax allocation increments as provided in Code Section 36-44-9, the taxable value of property subject to ad valorem property taxes within a tax allocation district shall not exceed the tax allocation increment base of the district until the district is terminated. Nothing in this chapter shall be construed to freeze the ad valorem tax millage

rate of any political subdivision or county or independent board of education consenting to the inclusion of its ad valorem property taxes as a basis for computing tax allocation increments, and any such rate may be increased or decreased at any time after the creation of a tax allocation district in the same manner and under the same authority that such rate has been previously fixed by such political subdivision or county or independent board of education. (Code 1981, § 36-44-15, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-16. Loans for financing redevelopment costs.

As an additional source for financing redevelopment costs, a political subdivision or its redevelopment agency may borrow funds from financial institutions and, in connection therewith, may pledge or assign lease contracts or revenue received from lease contracts on property owned by the political subdivision or its redevelopment agency within a redevelopment area. A political subdivision or its redevelopment agency is authorized to enter into contracts with financial institutions for the purpose of exercising the authority provided by this Code section, and such contracts may obligate the political subdivision or its redevelopment agency for any number of years not exceeding 25. Contractual obligations incurred by a political subdivision pursuant to this Code section shall not constitute debt within the meaning of Article IX, Section V of the Constitution. (Code 1981, § 36-44-16, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-17. Limitation on creation of tax allocation district.

No political subdivision may create a tax allocation district when the total current taxable value of property subject to ad valorem property taxes within the proposed district plus the total current taxable value of property subject to ad valorem property taxes within all its existing tax allocation districts exceeds 10 percent of the total current taxable value of all taxable property located within the area of operation of the political subdivision. (Code 1981, § 36-44-17, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-18. Application of Urban Redevelopment Law.

It is specifically provided that Code Section 36-61-16 of the "Urban Redevelopment Law," which Code section provides for cooperation among public bodies for redevelopment purposes under said law, shall be applicable to the exercise of redevelopment powers provided by this chapter. (Code 1981, § 36-44-18, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-19. Contracting with private individuals or entities.

A political subdivision may enter into any contract relating to the exercise of its redevelopment powers under this chapter with any private persons, firms, corporations, or business entities for any period not exceeding 30 years. Such contracts may include, without being limited to, contracts to convey or otherwise obligate real property for redevelopment under this chapter although that property has not yet been acquired at the time of contracting by the county or municipality. (Code 1981, § 36-44-19, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-20. Requirement of insufficiency.

(a) Notwithstanding any other provisions of this chapter, a local legislative body may use, pledge, or otherwise obligate its general funds for payment or security for payment of tax allocation bonds issued or incurred under this chapter but only if those general funds are derived from a designated tax allocation district and used for payment or security for payment of tax allocation bonds issued or incurred under this chapter for redevelopment of that district and only to the extent that positive tax increments or lease or other contract payments in that district's special fund are insufficient at any time to pay principal and interest due on such bonds.

(b) The requirement of insufficiency provided for in subsection (a) of this Code section may be satisfied by adoption of a resolution of the local legislative body finding that positive tax increments or lease or other contract payments in the district's special fund will be insufficient to pay principal and interest on bonds to be issued to finance redevelopment costs for the redevelopment described in the redevelopment plan. (Code 1981, § 36-44-20, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-21. Public employees and officials prohibited from holding interest disclosures; voidability of prohibited transactions; misconduct in office.

(a) No elected or appointed official or employee of a political subdivision or a board, commission, or redevelopment agency thereof shall voluntarily acquire any interest, direct or indirect, in any property included or planned to be included in a redevelopment area, or in any contract or transaction or proposed contract or transaction in connection with the redevelopment of that redevelopment area. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local legislative body and such disclosure shall be entered upon the minutes of the local legislative body. Any such elected or appointed official or employee who, within two years imme-

diately prior to the date the plan is submitted to a local legislative body under subsection (b) of Code Section 36-44-7, acquires ownership or control of any interest, direct or indirect, in any property which is included in the redevelopment area designated in that plan and who retains that ownership or control at the time that such plan is so submitted shall, at least 30 days prior to the date scheduled for the local legislative body to adopt the plan, disclose the interest in writing to the local legislative body and such disclosure shall be entered upon the minutes of the local legislative body, and that person shall not participate in any action by the political subdivision, board, commission, or redevelopment agency thereof which affects that property. Any disclosure required to be made by this subsection shall concurrently be made to the redevelopment agency.

(b) Any contract or transaction in violation of subsection (a) of this Code section or disclosure of which is not made as provided in that subsection (a) shall be voidable by the local legislative body. This subsection shall not apply to any indenture, agreement, contract, or transaction which constitutes security, direct or indirect, for payment of bonds or other obligations incurred pursuant to a redevelopment plan, and the judgment and order confirming and validating any such bonds or other obligations shall constitute a final and conclusive adjudication as to any such security.

(c) Failure by an official or employee to comply with subsection (a) of this Code section shall constitute misconduct in office. (Code 1981, § 36-44-21, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-22. Approval of local law; expansion of authorities by localities prohibited.

Redevelopment powers under this chapter may not be exercised by any political subdivision unless so authorized by a local law relating thereto, which local law may limit but may not expand those redevelopment powers established by this chapter as to the local political subdivision to which the local law is applicable. Such local law, and all amendments thereto, shall become effective only if approved in a special election by a majority of the qualified voters voting of each political subdivision directly affected, which special election shall be held as provided in that local law, but in conformity with the requirements for special elections pursuant to Title 21. (Code 1981, § 36-44-22, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

36-44-23. Cumulative and supplemental powers.

The powers provided by this chapter are intended by the General Assembly to be cumulative and supplemental to any powers heretofore

provided by law for counties, municipalities, and consolidated governments of this state and not in lieu of any such heretofore existing powers. (Code 1981, § 36-44-23, enacted by Ga. L. 2009, p. 158, § 2/HB 63.)

CHAPTER 45

MUNICIPAL TRAINING

Article 1

In General

Sec.
36-45-1. Short title.
36-45-2. Legislative findings and intent.
36-45-3. Definitions.
36-45-4. Training of elected members of municipal governing authority.
36-45-5. Harold F. Holtz Municipal Training Institute.
36-45-6 through 36-45-8. [Repealed].
36-45-9. Report on accomplishments of institute.

Article 2

Clerks of Governing Authorities of Municipalities

36-45-20. Training course.

Law reviews. — For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990).

ARTICLE 1

IN GENERAL

36-45-1. Short title.

This article shall be known and may be cited as the "Georgia Municipal Training Act." (Code 1981, § 36-45-1, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 2004, p. 983, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter".

Editor's notes. — Ga. L. 2004, p. 983, § 1, effective May 17, 2004, reenacted this Code section without change.

36-45-2. Legislative findings and intent.

The General Assembly finds and declares that it is in the best interests of the citizens of this state to require newly elected members of a municipal governing authority to attend a course of training and education on matters pertaining to the administration and operation of municipal government. The purpose of such course shall be to instruct such individuals in the powers, duties, and responsibilities of their positions of public trust. (Code 1981, § 36-45-2, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 2004, p. 983, § 1.)

36-45-3. Definitions.

As used in this article, the term:

(1) "Institute" means the Harold F. Holtz Municipal Training Institute.

(2) "Municipal governing authority" means the governing authority of a municipal corporation.

(3) "State" means the State of Georgia and any department, board, bureau, commission, or other agency thereof.

(4) "Vinson Institute" means the Carl Vinson Institute of Government of the University of Georgia. (Code 1981, § 36-45-3, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 1997, p. 860, § 1; Ga. L. 2004, p. 983, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" in the introductory language.

36-45-4. Training of elected members of municipal governing authority.

(a) All persons elected as members of a municipal governing authority who were not serving as members of a municipal governing authority on July 1, 1990, shall enroll in, attend, and satisfactorily complete a course of training and education on matters pertaining to the administration and operations of municipal governments. Such course of training and education shall include, but not be limited to, orientation in local government finance and budgeting; methods of taxation; planning; public works and utilities; parks and recreation; environmental management; public safety; personnel management; responsiveness to the community; the ethics, duties, and responsibilities of members of a municipal governing authority or a chief executive officer; and such other matters as may be deemed necessary and appropriate by the Vinson Institute.

(b) All expenses incurred by a newly elected member of a municipal governing authority related to the course of training and education authorized and required by subsection (a) of this Code section, including the reasonable costs of housing, travel, and meals, shall be paid from public funds appropriated for such purposes. All expenses not paid for by state funds shall be paid from municipal funds by the municipal governing authority whose newly elected member or members shall attend such course. (Code 1981, § 36-45-4, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 2004, p. 983, § 1.)

36-45-5. Harold F. Holtz Municipal Training Institute.

(a) There is created and established the Harold F. Holtz Municipal Training Institute. Except as otherwise provided in Code Sections

36-45-4 and 36-45-20, all costs of operating and conducting the institute shall be paid for from public funds appropriated for such purposes.

(b) The Vinson Institute shall establish, in consultation with the Georgia Municipal Association, a committee of elected municipal officials to design, implement, and administer the course of training and education required by Code Sections 36-45-4 and 36-45-20.

(c) The course of training and education required by Code Sections 36-45-4 and 36-45-20 shall be conducted by the institute under such rules, regulations, procedures, policies, requirements, and standards as prescribed from time to time by the committee established pursuant to subsection (b) of this Code section.

(d) The committee established pursuant to subsection (b) of this Code section shall establish guidelines and procedures to permit any person elected or appointed as a member of a municipal governing authority after January 1 of a calendar year or any person who is unable to attend or complete the course of training and education when offered by the institute due to medical disability, providential cause, or any other reason deemed sufficient by such committee, to comply with the requirements of Code Sections 36-45-4 and 36-45-20.

(e) The committee established pursuant to subsection (b) of this Code section shall perform such other duties and have such other powers and authority as may be necessary and proper or as prescribed by general law. (Code 1981, § 36-45-5, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 1992, p. 1899, §§ 1, 2; Ga. L. 1997, p. 860, § 2; Ga. L. 2004, p. 983, § 1; Ga. L. 2005, p. 60, § 36/HB 95.)

36-45-6 through 36-45-8.

Reserved. Repealed by Ga. L. 2004, p. 983, § 1, effective May 17, 2004.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, these Code sections were "reserved" following their repeal by Ga. L. 2004, p. 983, § 1.

Editor's notes. — These Code sections were based on Code 1981, §§ 36-45-6 through 36-45-8, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 1992, p. 1899, §§ 1, 3; Ga. L. 1997, p. 860, § 2; Ga. L. 1999, p. 637, § 1.

36-45-9. Report on accomplishments of institute.

On or before February 1 of each year, the Vinson Institute shall file a report to the Governor, the chairperson of the Senate State and Local Governmental Operations Committee, and the chairperson of the House Committee on State Planning and Community Affairs. The report shall include a summary of the accomplishments of the institute during the preceding calendar year, including, but not limited to, the total number of members of a municipal governing authority who

attended the course of training and education offered by the institute; an outline of the institute's programs for the current calendar year; an evaluation of the programs and services offered by the institute; and recommendations, if any, for legislation as may be necessary to improve the programs and services offered by the institute. (Code 1981, § 36-45-9, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 1995, p. 10, § 36; Ga. L. 2004, p. 983, § 1.)

ARTICLE 2

CLERKS OF GOVERNING AUTHORITIES OF MUNICIPALITIES

36-45-20. Training course.

(a) For purposes of this article, the term "clerk of the governing authority of a municipality" means an individual holding the office of city clerk pursuant to a municipal charter and who is normally employed in that capacity for 40 hours per week.

(b) Any person hired or appointed to serve as the clerk of the governing authority of a municipality shall attend and complete a course of training on matters pertaining to the basic performance of his or her official duties. A city official who is an acting city clerk or who carries the dual responsibilities of both city manager and city clerk is exempt from such training.

(c) The personnel of the Carl Vinson Institute of Government are authorized to work with the members of the Georgia Municipal Clerks and Finance Officers Association and the Georgia Municipal Association in establishing and operating the training course provided for in subsection (b) of this Code section.

(d) All reasonable expenses of attending the training course required by this Code section shall be paid from funds appropriated by the municipal governing authority for such purposes. (Code 1981, § 36-45-20, enacted by Ga. L. 1992, p. 1899, § 4; Ga. L. 1993, p. 91, § 36; Ga. L. 1997, p. 860, § 3; Ga. L. 2004, p. 983, § 1.)

CHAPTERS 46 THROUGH 59

Reserved

Provisions Applicable to Counties and Municipal Corporations

CHAPTER 60

GENERAL PROVISIONS

Sec.

36-60-1. Licensing of self-service motor fuel dispensing pumps; penalty for operation without license or attendant.

36-60-2. Contracts to provide industrial waste water treatment services.

36-60-3. Restriction of adult bookstores and movie houses to certain areas.

36-60-4. Removal of junked motor vehicles; adoption of ordinances; authority to contract for removal.

36-60-5. Installation of road grates to accommodate bicycles.

36-60-6. Utilization of federal work authorization program; "employee" defined; issuance of license; evidence of state licensure; annual reporting; standardized form affidavit; violation; investigations.

36-60-6.1. Preservation and protection of abandoned or unmaintained cemeteries [Repealed].

36-60-7. Use of excess proceeds of bonds issued to match state and federal allocations for hospital.

36-60-8. Audit of county or municipal corporation or units thereof.

36-60-9. Investigation of business for issuance of county or municipal license; criminal sanction for violation.

36-60-10. Annual meeting and agreement between county and city representatives as to services in portion of city within county.

36-60-11. Attorney General to receive a copy of any submission to the United States Department of Justice pursuant to federal Voting Rights Act of 1965.

36-60-12. Electronic security systems; installation, service, operation, sale, or lease by counties or municipal corporations.

36-60-13. Multiyear lease, purchase, or lease-purchase contracts.

36-60-14. Authority to enter into certain one-year, or less, contracts; exception.

36-60-15. Property subject to contract for lease purchase or installment purchase.

36-60-15.1. Operation and maintenance of water treatment systems by private entities.

36-60-16. Separate approval of municipal and county consolidation by referendum.

36-60-17. Water supplier's cut off of water to premises because of indebtedness of prior owner, occupant, or lessee prohibited; records required; limited liens for unpaid charges for water, gas, sewerage service, or electricity.

36-60-17.1. Localities prohibited from requiring connection with or use of water supplied by a public water system except when other water unfit; charges or fees for services made available but not used prohibited; applicability.

36-60-18. Obtaining real property within adjoining county which will be exchanged for federal property.

36-60-19. Dispatch centers; required training for communications officers; exceptions; penalty for noncompliance.

36-60-20. Political subdivisions have no

Sec.
liability for losses from any failure or malfunction of computer software.
36-60-21. Contracts with private companies to construct and operate private toll roads and bridges to facilitate public transportation without additional tax revenues.
36-60-22. Rock quarry operations prohibited under certain circumstances.
36-60-23. Volunteer firefighters for counties and municipalities.
36-60-24. Sale of products or services.
36-60-25. Certificates of public necessity and convenience and medallions for taxicabs.
36-60-26. Unlawful to issue backdated license, permit, or other authorizing document; documents issued in violation void in entirety; criminal penalty for violations.

Cross references. — Counties and municipalities generally, Ga. Const. 1983, Art. IX. Special elections in counties and municipalities pertaining to prohibition of package sale of distilled spirits, § 3-4-40 et seq. Creation, powers, and authority of municipal, county, and other housing authorities, § 8-3-1 et seq. Duty of counties and municipalities to regulate activities which may result in soil erosion or sedimentation of waters and lands, § 12-7-4. Powers and duties of local fire departments, T. 25, C. 3. County and municipal ordinances relating to inspection of meat, poultry, or dairy products, § 26-2-212. Ineligibility of county and municipal officials to serve as members of General Assembly, § 28-1-13. County and municipal hospital authorities, § 31-7-70 et seq. Acquisition of property by counties, municipalities and others for transportation purposes generally, T. 32, C. 3. Group self-insurance programs for provision of workers' compensation benefits for municipal and county employees, § 34-9-150 et seq. Local organizations for emergency management, § 38-3-27 et seq. Effect of applicable state laws on powers of counties and municipalities to regulate use of streets and highways under their jurisdiction, § 40-6-370 et seq. Regulation of business of dealers in precious metals and gems, T. 43, C. 37. Prohibition against requiring municipal or county officers or employees to reside within boundaries of municipality or county, § 45-2-5. Agreements between state revenue commissioner and counties or municipalities for purpose of collection by commissioner of tax levied by county or municipality when tax is also levied and collected by commissioner for state, § 48-2-10. County and municipal income taxes, § 48-7-140 et seq. Joint county and municipal sales and use tax, § 48-8-80 et seq. General authority of counties and municipalities with regard to specific, business, and occupation taxes, T. 48, C. 13. Power of Department of Administrative Services to permit local political subdivisions to purchase supplies through state, § 50-5-100 et seq.

Law reviews. — For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

36-60-1. Licensing of self-service motor fuel dispensing pumps; penalty for operation without license or attendant.

(a) The governing authority of each county and municipal corporation is authorized to license the operation of self-service motor fuel dispensing pumps and to charge a fee for each license. If the governing authority determines that the operation of self-service motor fuel dispensing pumps will not be injurious to the health or welfare of the residents of the political jurisdiction affected, it shall grant a license to

any applicant not otherwise disqualified by law who makes application on a form prescribed by the governing authority. The license shall be effective from January 1 to December 31 of each year.

(b) It shall be unlawful for any person, firm, or corporation to operate a self-service motor fuel dispensing pump unless an attendant is present at the pump's location and such person, firm, or corporation has obtained a valid license from the governing authority of the political jurisdiction affected. Any person, firm, or corporation violating this Code section shall be guilty of a misdemeanor.

(c) This Code section shall not apply to motor fuel dispensing units which are not open to the public. (Ga. L. 1971, p. 683, §§ 1-3.)

Cross references. — Dispensing of gasoline at self-service pumps to holders of special disability permits, § 10-1-164.1. Motor fuel taxes generally, § 48-9-1 et seq.

Law reviews. — For article as to the power of Georgia local governments to regulate the trades and occupations of its citizens, see 9 Ga. L. Rev. 115 (1974).

JUDICIAL DECISIONS

Statute is not unconstitutional. — Statute's enactment was a proper exercise of the police power, and the statute's delegation on a local option basis of police power to the local governing authorities was a proper, and not unconstitutional, delegation. Stop-N-Go Markets of Ga., Inc. v. City of Clarkston, 238 Ga. 307, 232 S.E.2d 906 (1977) (see O.C.G.A. § 36-60-1).

Cited in J & L Oil Co. v. City of Carrollton, 230 Ga. 817, 199 S.E.2d 190 (1973).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Garages, and Filling and Parking Stations, §§ 12, 13, 122, 126.

C.J.S. — 53 C.J.S., Licenses, § 128. 101A C.J.S., Zoning and Land Planning, §§ 61, 120 et seq.

ALR. — Public regulation or authorization of gasoline filling stations, 18 ALR 101; 29 ALR 450; 34 ALR 507; 42 ALR 978; 49 ALR 767; 55 ALR 256; 79 ALR 918; 96 ALR 1337.

Rights and remedies of parties in respect to lease of filling station, 83 ALR 1416; 126 ALR 1375.

Automobile gas filling or supply station as a nuisance, 124 ALR 383.

Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 ALR 1339.

Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations, 46 ALR3d 1393.

36-60-2. Contracts to provide industrial waste water treatment services.

In order to comply with applicable state and federal water pollution control standards and to be eligible for grants-in-aid or other allot-

ments, notwithstanding any provision of law to the contrary, each municipal corporation and each county of this state is authorized, in the discretion of its governing authority, to enter into valid and binding contracts with each other and with private persons, firms, associations, or corporations, for any period of time not to exceed 50 years, to provide industrial waste water treatment services to such private persons, firms, associations, or corporations, provided that such contracts shall provide that the charge for the services shall never be less than the actual cost to the municipal corporation or county for providing the services. (Ga. L. 1974, p. 617, § 1.)

Cross references. — Control of water pollution and surface-water use generally, § 12-5-20 et seq. Regulation of solid waste handling, disposal, and treatment facilities, § 12-8-20 et seq. Contracts relating to provision of solid waste handling services, § 12-8-77.

OPINIONS OF THE ATTORNEY GENERAL

Exception to rule against binding successors in office. — O.C.G.A. § 36-60-2, permitting municipalities to enter into multi-year contracts to provide industrial waste water treatment services, provides an explicit statutory exception to O.C.G.A. § 36-30-3 and allows contracts between municipalities and certain private entities for periods up to 50 years. The contract must enable the municipality to comply with the state and federal pollution standards and to receive public allotments. In addition, the contract must comply with the statutory requirement that the private corporation be charged a rate never less than the actual cost to the municipality. A contract meeting the above requirements would not violate the statutory prohibition against binding successors in office. 1992 Op. Att'y Gen. No. 92-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 148 et seq., 185 et seq.

C.J.S. — 64 C.J.S., Municipal Corporations, §§ 1169, 1171.

ALR. — Validity and construction of anti-water pollution statutes or ordinances, 32 ALR3d 215.

36-60-3. Restriction of adult bookstores and movie houses to certain areas.

(a) As used in this Code section, the term:

(1) "Adult bookstore" means any commercial establishment in which is offered for sale any book or publication, film, or other medium which depicts sexually explicit nudity or sexual conduct.

(2) "Adult movie house" means any movie theater which on a regular, continuing basis shows films rated "X" by the Motion Picture Coding Association of America or any movie theater which presents for public viewing on a regular, continuing basis so-called "adult films" depicting sexual conduct.

(3) "Explicit media outlet" means any commercial establishment which has an inventory of goods that is composed of at least 50 percent of books, pamphlets, magazines, or other printed publications, films, or other media which depict sexually explicit nudity or sexual conduct.

(4) "Sexual conduct" means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breast which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

(5) "Sexually explicit nudity" means a state of undress so as to expose the human male or female genitals or pubic area with less than a full opaque covering or the depiction of covered or uncovered male genitals in a discernibly turgid state which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

(b) The governing authority of each county and municipal corporation is authorized to enact, for their respective jurisdictions, ordinances which shall have the effect of restricting the operation of adult bookstores, explicit media outlets, and adult movie houses to areas zoned for commercial or industrial purposes; provided, however, that no explicit media outlet or adult movie house shall be located within 1,000 feet of any school building, school grounds, college campus, public place of worship, or area zoned primarily for residential purposes. As used in this subsection, the term "school building" shall apply only to public or private school buildings. The distance requirement provided in this subsection for explicit media outlets and adult movie houses shall not apply to said locations which hold lawful permits or business licenses on July 1, 1997. In determining the distance requirements provided for in this Code section, the measurement shall be from the closest property line on which the adult bookstore, explicit media outlet, or adult movie house is located to the closest property line on which the school, college, religious institution, public place of worship, or area zoned primarily for residential purposes is located. Nothing in this Code section shall be construed so as to prohibit the adoption by the governing authority of any county or municipality of restrictions relating to the location of adult bookstores, explicit media outlets, and adult movie houses which are more stringent than the requirements of this Code section.

(c) Any person, firm, or corporation violating any ordinance enacted pursuant to subsection (b) of this Code section shall be guilty of a misdemeanor. Each day of operation in violation shall be deemed a separate offense. (Ga. L. 1971, p. 888, §§ 1, 3, 4; Ga. L. 1982, p. 3, § 36; Ga. L. 1997, p. 855, § 1.)

Cross references. — Distribution of obscene materials, distribution of materials depicting nudity or sexual conduct, § 16-12-80 et seq. Employment, use, persuasion, inducement, enticement, or coercion of minor to engage in sexual conduct for a visual medium or performance, § 16-12-100.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, in the fourth sentence of subsection (b), a comma was inserted following "worship" and "residential" was substituted for "residental".

Law reviews. — For note, "Defending Against a Charge of Obscenity in the Internet Age: How Google Searches Can Illuminate Miller's 'Contemporary Community Standards,'" see 26 Ga. St. U. L. Rev. 1029 (2010).

JUDICIAL DECISIONS

Cited in 106 Forsyth Corp. v. Bishop, 482 F.2d 280 (5th Cir. 1973); Sanders v. State, 231 Ga. 608, 203 S.E.2d 153 (1974); Coleman v. Bradford, 238 Ga. 505, 233 S.E.2d 764 (1977).

RESEARCH REFERENCES

C.J.S. — 101A C.J.S., Zoning and Land Planning, §§ 120, 122, 412.

ALR. — Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 ALR 1339.

Validity of statutes or ordinances requiring sex-oriented businesses to obtain operating licenses, 8 ALR4th 130.

36-60-4. Removal of junked motor vehicles; adoption of ordinances; authority to contract for removal.

(a) Each county and municipal corporation shall have the authority to provide by ordinance for the removal and disposal of any discarded, dismantled, wrecked, scrapped, ruined, or junked motor vehicles or parts thereof, when requested by the owner or when such motor vehicles are in such a condition that they constitute a health hazard or unsightly nuisance, notwithstanding the fact that such motor vehicles may be located upon private property.

(b) Each county and municipal corporation, in addition to the specific powers conferred upon it by this Code section, is vested with such additional powers as shall be necessary to carry out the purposes of this Code section and shall have the authority to adopt all reasonable ordinances in order to carry out and effectuate the purposes of this Code section. Additionally, each county and municipality shall have the power and authority to contract with private individuals and firms for the removal of discarded, dismantled, wrecked, scrapped, ruined, or junked motor vehicles or parts thereof.

(c) Nothing contained within this Code section shall be deemed to apply to any motor vehicle which is located within the premises of any junkyard complying with the laws of this state relating to the licensing and regulating of motor vehicle junkyards. (Ga. L. 1971, p. 670, §§ 1-3.)

Cross references. — Control of junkyards, § 32-6-240 et seq. Disposition of abandoned motor vehicles, T. 40, C. 11. Removal and storage by landowners of improperly parked vehicles, § 44-1-13.

JUDICIAL DECISIONS

Cited in Cherokee County v. Hause, 229 Ga. App. 578, 494 S.E.2d 234 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 398, 400 et seq.

C.J.S. — 101A C.J.S., Zoning and Land Planning, § 135.

36-60-5. Installation of road grates to accommodate bicycles.

After July 1, 1978, each county and municipal corporation shall install all newly located grates upon any public roadway so as to accommodate bicycles traveling on the public road parallel to the lane of travel of vehicles proceeding over such roadways, except that this Code section shall not apply to limited access highways or other streets or roads on which bicycle travel is prohibited. (Ga. L. 1978, p. 257, § 1.)

JUDICIAL DECISIONS

Existing sewer grates which have been adjusted due to street resurfacing are not considered newly located grates for the purpose of installing bicycle safe grates. DeWaters v. City of Atlanta, 169 Ga. App. 41, 311 S.E.2d 232 (1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 448.

36-60-6. Utilization of federal work authorization program; "employee" defined; issuance of license; evidence of state licensure; annual reporting; standardized form affidavit; violation; investigations.

(a) Every private employer with more than ten employees shall register with and utilize the federal work authorization program, as defined by Code Section 13-10-90. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees

but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(b) For purposes of this Code section, the term "employee" shall have the same meaning as set forth in subparagraph (A) of paragraph (1.1) of Code Section 48-13-5, provided that such person is also employed to work not less than 35 hours per week.

(c) Before any county or municipal corporation issues a business license, occupational tax certificate, or other document required to operate a business to any person engaged in a profession or business required to be licensed by the state under Title 43, the person shall provide evidence of such licensure to the appropriate agency of the county or municipal corporation that issues business licenses. No business license, occupational tax certificate, or other document required to operate a business shall be issued to any person subject to licensure under Title 43 without evidence of such licensure being presented.

(d) Before any county or municipal corporation issues or renews a business license, occupational tax certificate, or other document required to operate a business to any person, the person shall provide evidence that he or she is authorized to use the federal work authorization program or evidence that the provisions of this Code section do not apply. Evidence of such use shall be in the form of an affidavit as provided by the Attorney General in subsection (f) of this Code section attesting that he or she utilizes the federal work authorization program in accordance with federal regulations or that he or she employs fewer than 11 employees or otherwise does not fall within the requirements of this Code section. Whether an employer is exempt from using the federal work authorization program as required by this Code section shall be determined by the number of employees employed by such employer on January 1 of the year during which the affidavit is submitted. The affidavit shall include the employer's federally assigned employment eligibility verification system user number and the date of authority for use. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(e) Beginning December 31, 2012, and annually thereafter, any county or municipal corporation issuing or renewing a business license, occupational tax certificate, or other document required to operate a business shall provide to the Department of Audits and Accounts a report demonstrating that such county or municipality is acting in compliance with the provisions of this Code section. This annual report shall identify each license or certificate issued by the agency in the

preceding 12 months and include the name of the person and business issued a license or other document and his or her federally assigned employment eligibility verification system user number as provided in the affidavit submitted at the time of application. Subject to funding, the Department of Audits and Accounts shall annually conduct an audit of no fewer than 20 percent of such reporting agencies.

(f) In order to assist private businesses and counties and municipal corporations in complying with the provisions of this Code section, the Attorney General shall provide a standardized form affidavit which may be used as acceptable evidence demonstrating use of the federal employment eligibility verification system or that the provisions of subsection (b) of this Code section do not apply to the applicant. The form affidavit shall be posted by the Attorney General on the Department of Law's official website no later than January 1, 2012.

(g) Once an applicant for a business license, occupational tax certificate, or other document required to operate a business has submitted an affidavit with a federally assigned employment eligibility verification system user number, he or she shall not be authorized to submit a renewal application using a new or different federally assigned employment eligibility verification system user number, unless accompanied by a sworn document explaining the reason such applicant obtained a new or different federally assigned employment eligibility verification system user number.

(h) Any person presenting false or misleading evidence of state licensure shall be guilty of a misdemeanor. Any government official or employee knowingly acting in violation of this Code section shall be guilty of a misdemeanor; provided, however, that any person who knowingly submits a false or misleading affidavit pursuant to this Code section shall be guilty of submitting a false document in violation of Code Section 16-10-20. It shall be a defense to a violation of this Code section that such person acted in good faith and made a reasonable attempt to comply with the requirements of this Code section.

(i) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(j) The Attorney General shall be authorized to conduct an investigation and bring any criminal or civil action he or she deems necessary to ensure compliance with the provisions of this Code section. The Attorney General shall provide an employer who is found to have committed a good faith violation of this Code section 30 days to demonstrate to the Attorney General that such employer has come into compliance with this Code section. During the course of any investigation of violations of this Code section, the Attorney General shall also

investigate potential violations of Code Section 16-9-121.1 by employees that may have led to violations of this Code section. (Code 1981, § 36-60-6, enacted by Ga. L. 1992, p. 1553, § 1; Ga. L. 2011, p. 794, § 12/HB 87.)

The 2011 amendment, effective July 1, 2011, added subsections (a) and (b); redesignated former subsection (a) as present subsection (c); in subsection (c), inserted "occupational tax certificate, or other document required to operate a business" in the first and second sentences, and substituted "person shall" for "person must" in the first sentence; added subsections (d) through (g); redesignated former subsection (b) as present subsection (h); in subsection (h), deleted "such" preceding "state" in the first sentence and added the second and third sentences; and added subsections (i) and (j). See editor's note for applicability.

Editor's notes. — Former Code Section 36-60-6, pertaining to permits for disturbing burial places in land development, was based on Ga. L. 1973, p. 318, §§ 1, 2; Ga. L. 1987, p. 387, § 1, and was repealed and made reserved by Ga. L. 1991, p. 924, § 1, effective April 11, 1991.

Ga. L. 2011, p. 794, § 1/HB 87, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21/HB 87, not codified by the General Assembly, provides for severability, and provides, in part, that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22/HB 87, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 35 (2011).

36-60-6.1. Preservation and protection of abandoned or unmaintained cemeteries.

Repealed by Ga. L. 1991, p. 924, § 2, effective April 11, 1991.

Editor's notes. — This Code section was based on Ga. L. 1989, p. 14, § 36.

36-60-7. Use of excess proceeds of bonds issued to match state and federal allocations for hospital.

When any county or municipal corporation of this state has voted, issued, and sold, or hereafter votes, issues, and sells bonds with the proceeds of which to match state and federal allocations and contributions and to build and equip a hospital in such county or municipal corporation, and because of increased contributions thereto by the state or the federal government the cost thereof is less than the architects or engineers estimate, or for other reasons there is an excess over the cost to such county or municipal corporation in the proceeds of the sale of such bonds, such county or municipal corporation, acting by and through its governing authority, may apply such excess to the cost of supplies for and of opening and operating such hospital or to the cost of

constructing and equipping a nurses' home to be used in connection therewith. Such excess of bond issues may be used and so applied whether the hospital is built and equipped through a contract made by the county or municipal corporation directly or is made through a hospital authority under Article 4 of Chapter 7 of Title 31, of which such county or municipal corporation is a participating unit. (Ga. L. 1952, p. 151, §§ 1, 2.)

Cross references. — Hospital authorities, § 31-7-70 et seq.

RESEARCH REFERENCES

ALR. — Power of municipal corporation to provide hospital, 25 ALR 612.

36-60-8. Audit of county or municipal corporation or units thereof.

Whenever an audit of the financial affairs of a county or municipal corporation or of an officer, board, department, unit, or other political subdivision of a county or municipal corporation is made pursuant to a requirement or to an authorization otherwise provided by law, the audit report shall include the auditor's unqualified opinion upon the presentation of the financial position and the result of the operations of the governmental unit or office which is audited. If the auditor is unable to express an unqualified opinion, he or she shall so state and shall further detail the reasons for qualification or disclaimer of opinion. All such audits shall be conducted in conformity with generally accepted government auditing standards. (Ga. L. 1967, p. 883, § 1; Ga. L. 1968, p. 464, § 1; Ga. L. 1994, p. 1083, § 1.)

Cross references. — Minimum budget and auditing requirements for counties, municipalities, and other entities, T. 36, C. 81. Regulation of accountants, T. 43, C. 3.

Editor's notes. — Ga. L. 1994, p. 1083, § 6, not codified by the General Assembly, provides: "No state agency shall make or transmit any state grant funds to any local government which has failed to provide all the audits required by law within the preceding five years."

OPINIONS OF THE ATTORNEY GENERAL

Sufficiency of audit. — An audit of the financial affairs of a county or municipality, or an officer, board, department, unit, or other political subdivision of a county or municipality made pursuant to a requirement or authorization provided by law, is of legal efficacy for purposes of such requirement or authorization if that audit includes either the auditor's unqualified opinion upon the presentation of the financial position and the result of the operations of that county, or a detailed explanation for qualification or disclaimer of opinion. 1969 Op. Att'y Gen. No. 69-232.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2089.

36-60-9. Investigation of business for issuance of county or municipal license; criminal sanction for violation.

(a) No person shall investigate a business for the purpose of providing information to a county or municipal corporation of this state, which information is used in determining whether or not such business shall receive a business or similar license issued pursuant to the valid exercise of the police power of the county or municipal corporation, when such person is employed by or contracting with the county or municipal corporation to make investigations of the type specified in this subsection and such person has been employed by or is then employed by the particular individual business which the person is investigating.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1977, p. 1197, §§ 1, 2.)

36-60-10. Annual meeting and agreement between county and city representatives as to services in portion of city within county.

(a) Representatives of the governing authority of any county in this state which contains the smaller portion of the population of a city with a total population of 350,000 or more according to the United States decennial census of 1970 or any future such census shall meet annually, prior to January 1, with representatives of the governing authority of such city to develop an agreement between the governing authorities on the following matters:

(1) The services to be provided during the following calendar year by the county and by the city to the portion of the city that lies within the county; and

(2) The method of dispatching services during the following calendar year to the portion of the city that lies within the county. Agreement on this matter shall provide a uniform procedure for dispatching services and shall include an agreement as to all street addresses in such portion of the city.

(b) Any agreements developed pursuant to subsection (a) of this Code section shall be in writing.

(c) The first annual meeting required by this Code section shall be held prior to January 1, 1977. (Ga. L. 1976, p. 3137, §§ 1-3; Code 1981,

§ 36-60-10, enacted by Ga. L. 1982, p. 2107, § 42; Ga. L. 1991, p. 989, § 4.)

36-60-11. Attorney General to receive a copy of any submission to the United States Department of Justice pursuant to federal Voting Rights Act of 1965.

(a) Whenever any county, municipality, or local board of education of this state takes any action which must be submitted for review to the United States Department of Justice pursuant to Section 5 of the federal Voting Rights Act of 1965, as amended, 42 U.S.C., Section 1973c., a copy of such submission shall be transmitted to the Attorney General.

(b) Whenever any county, municipality, or local board of education is required to submit a local Act of the General Assembly to the United States Department of Justice for review pursuant to Section 5 of the federal Voting Rights Act of 1965, as amended, 42 U.S.C., Section 1973c., a copy of such submission shall be submitted to the Attorney General.

(c) The Attorney General shall be authorized to review and comment to the county, municipality, or local board of education on the adequacy of a submission received by that officer pursuant to subsection (a) or (b) of this Code section. The Attorney General shall be further authorized to assist any county, municipality, or local board of education in the preparation of a submission to the United States Department of Justice. (Code 1981, § 36-60-11, enacted by Ga. L. 1984, p. 1432, § 1.)

36-60-12. Electronic security systems; installation, service, operation, sale, or lease by counties or municipal corporations.

No county or municipal corporation shall install, service, maintain, operate, sell, or lease as lessor any burglar alarm system, fire alarm system, or other electronic security system on private property if a private contractor licensed to do business within the county or municipality offers such systems or services to the public within such county or municipality. The provisions of this Code section shall not prohibit a county or municipal corporation from installing, servicing, maintaining, or operating a burglar alarm system, fire alarm system, or other electronic security system on any property owned or leased by such county or municipal corporation. This Code section shall not apply to any county or municipality offering electronic security systems on January 1, 1988. This Code section shall not prevent volunteer fire departments from selling or leasing battery operated fire detection equipment or fire extinguishers in their service areas. Any person

violating this Code section or expending county or municipal funds in violation of this Code section shall be guilty of a misdemeanor. (Code 1981, § 36-60-12, enacted by Ga. L. 1988, p. 1847, § 1; Ga. L. 1990, p. 8, § 36.)

Code Commission notes. — Two 1988 Acts added a new Code Section 36-60-12. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L. 1988, p. 1847 has retained the Code Section 36-60-12 designation and the Code section enacted by Ga. L. 1988, p. 1954 has been redesignated as Code Section 36-60-13.

Editor's notes. — Ga. L. 1990, p. 8, § 55 repealed Ga. L. 1988, p. 1847, § 2, relating to the power of volunteer fire departments to sell or lease battery operated fire detection equipment or fire extinguishers in their service areas. For present provisions, see the fourth sentence of this Code section.

36-60-13. Multiyear lease, purchase, or lease-purchase contracts.

(a) Each county or municipality in this state shall be authorized to enter into multiyear lease, purchase, or lease-purchase contracts of all kinds for the acquisition of goods, materials, real and personal property, services, and supplies, provided that any such contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the county or municipality at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed as provided in this Code section;

(2) The contract may provide for automatic renewal unless positive action is taken by the county or municipality to terminate such contract, and the nature of such action shall be determined by the county or municipality and specified in the contract;

(3) The contract shall state the total obligation of the county or municipality for the calendar year of execution and shall further state the total obligation which will be incurred in each calendar year renewal term, if renewed; and

(4) The contract shall provide that title to any supplies, materials, equipment, or other personal property shall remain in the vendor until fully paid for by the county or municipality.

(b) In addition to the provisions enumerated in subsection (a) of this Code section, any contract authorized by this Code section may include:

(1) A provision which requires that the contract will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the county or municipality under the contract; or

(2) Any other provision reasonably necessary to protect the interests of the county or municipality.

(c) Any contract developed under this Code section containing the provisions enumerated in subsection (a) of this Code section shall be deemed to obligate the county or municipality only for those sums payable during the calendar year of execution or, in the event of a renewal by the county or municipality, for those sums payable in the individual calendar year renewal term.

(d) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the county or municipality for the payment of any sum beyond the calendar year of execution or, in the event of a renewal, beyond the calendar year of such renewal.

(e) No contract developed and executed pursuant to this Code section may be delivered if the principal portion of such contract, when added to the amount of debt incurred by any county or municipality pursuant to Article IX, Section V, Paragraph I of the Constitution of Georgia, exceeds 10 percent of the assessed value of all taxable property within such county or municipality.

(f) No contract developed and executed pursuant to this Code section may be delivered if the real or personal property being so financed has been the subject of a referendum which failed to receive the approval of the voters of the county or municipality within the immediately preceding four calendar years, unless such real or personal property is required to be financed pursuant to a federal or state court order, or imminent threat thereof, as certified by the governing authority of the county or municipality.

(g) No contract developed and executed pursuant to this Code section with respect to the acquisition of real property may be delivered unless a public hearing has been held by the county or municipality after two weeks' notice published in a newspaper of general circulation within the county or municipality.

(h)(1) On or after July 1, 2000, no contract developed and executed or renewed, refinanced, or restructured pursuant to this Code section with respect to real property may be delivered if the lesser of either of the following is exceeded:

(A) The average annual payments on the aggregate of all such outstanding contracts exceed 7.5 percent of the governmental fund revenues of the county or municipality for the calendar year preceding the delivery of such contract plus any available special county 1 percent sales and use tax proceeds collected pursuant to Code Section 48-8-111; or

(B) The outstanding principal balance on the aggregate of all such outstanding contracts exceeds $25 million; provided, however,

that with respect to any county or municipality in which, prior to July 1, 2000, the outstanding principal balance on the aggregate of outstanding contracts exceeds $25 million, such outstanding contracts may be renewed, refinanced, or restructured, but no new contracts shall be developed and executed until the outstanding principal balance on such outstanding contracts has been reduced so that the $25 million limitation of this subparagraph, or the limitation in subparagraph (A) of this paragraph, whichever is lower, is not exceeded.

(2) Paragraph (1) of this subsection shall not apply to contracts developed and executed or renewed, refinanced, or restructured pursuant to this Code section which are for projects or facilities:

(A) For the housing of court services, where any other state law or laws authorize the project or facility to be financed and paid for from the collection of fines rather than from tax revenues; or

(B) Which have been previously approved in the most recent referendum calling for the levy of a special county 1 percent sales and use tax pursuant to Part 1 of Article 3 of Chapter 8 of Title 48.

(i) Any such contract may provide for the payment by the county or municipality of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section.

(j) Nothing in this Code section shall restrict counties or municipalities from executing reasonable contracts arising out of their proprietary functions. (Code 1981, § 36-60-13, enacted by Ga. L. 1988, p. 1954, § 1; Ga. L. 1996, p. 441, § 1; Ga. L. 2000, p. 1443, § 1; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in the introductory paragraph of subsection (a).

Code Commission notes. — Two 1988 Acts added a new Code Section 36-60-12. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L. 1988, p. 1847 has retained the Code Section 36-60-12 designation and the Code section enacted by Ga. L. 1988, p. 1954 has been redesignated as Code Section 36-60-13.

Pursuant to Code Section 28-9-5, in 1988, "Code section" was substituted for "Code Section" in the first occurrence of the words in the introductory language of subsection (b).

Editor's notes. — Ga. L. 1990, p. 8, § 55, repealed Ga. L. 1988, p. 1954, § 2, providing for the terms and conditions under which counties or municipalities may enter into certain one year, or less, contracts. For present provisions, see Code Section 36-60-14.

Law reviews. — For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005); and 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 36-60-13 does not violate the constitutional debt limitations of Ga. Const. 1983, Art. IX, Sec. V, Para. I. Barkley v. City of Rome, 259 Ga. 355, 381 S.E.2d 34 (1989).

Contract under section is not debt. — Contract which satisfies the requirements of O.C.G.A. § 36-60-13 does not constitute a "debt" within the meaning of Ga. Const. 1983, Art. IX, Sec. V, Para. I and therefore does not require voter approval. Barkley v. City of Rome, 259 Ga. 355, 381 S.E.2d 34 (1989).

Lease agreement is not debt. — There is no distinction in O.C.G.A. § 36-60-13 between real and personal property and the strictures on leases for each class of property are the same; similarly, Ga. Const. 1983, Art. IX, Sec. V, Para. I(a), providing for a popular vote on the assumption of debt, makes no distinction between the two classes of property. Therefore, a county's decision to enter a lease purchase agreement with the Association of County Commissioners of Georgia to finance and construct a new courthouse was not a debt requiring a vote under Ga. Const. 1983, Art. IX, Sec. V, Para. I(a) and was in compliance with O.C.G.A. § 36-60-13 because it did not require future county commissioners to renew the contract, it allowed the county to terminate its financial obligations at the end of each calendar year, and it would never require the county to expend more than would be legally available under O.C.G.A. § 36-60-13. Bauerband v. Jackson County, 278 Ga. 222, 598 S.E.2d 444 (2004).

Contract as to provision of legal services. — O.C.G.A. § 36-60-13 did not apply to regulate over contract between county commissioners and county attorney for the provision of legal services. Brennan v. Chatham County Comm'rs, 209 Ga. App. 177, 433 S.E.2d 597 (1993).

Requirements of section violated. — Multi-year computer lease purchase agreement entered into by the county violated the requirements of O.C.G.A. § 36-60-13; therefore, the trial court properly granted the county's motion for summary judgment. Wasilkoff v. Douglas County, 227 Ga. App. 232, 488 S.E.2d 722 (1997) (events occurred prior to 1996 amendment).

Multiyear lease provision ambiguous. — Multiyear lease provision allowing termination of the lease pursuant to O.C.G.A. § 36-60-13 was ambiguous and the record did not show whether a county and the county's lessee intended the provision to apply generally to the lease or only if § 36-60-13 became applicable (i.e., appropriated funds were no longer available to allow the county to perform the county's obligations under lease). Thus, the county's right to terminate the lease under that provision was a fact issue for the jury to resolve. Etowah Valley Sporting Clay Park, LLC v. Dawson County, 294 Ga. App. 586, 669 S.E.2d 436 (2008), cert. denied, No. S09C0464, 2009 Ga. LEXIS 266 (Ga. 2009).

Settlement agreement enforceable. — Trial court erred in denying a property owner's motion for summary judgment in a county breach of contract action because a settlement agreement between the parties was enforceable; the county attorney had authority to make the settlement offer on behalf of the county board, and while a vote in a public meeting was a required formality to effectuate the purchase, the board's failure to complete that formality when voting in the public meeting could not destroy an already existing settlement agreement. Old Peachtree Partners, LLC v. Gwinnett County, No. A11A2097; No. A11A2150, 2012 Ga. App. LEXIS 259 (Mar. 8, 2012).

Cited in CSX Transp., Inc. v. Garden City, 196 F. Supp. 2d 1288 (S.D. Ga. 2002); Marlowe v. Colquitt County, 278 Ga. App. 184, 628 S.E.2d 622 (2006).

36-60-14. Authority to enter into certain one-year, or less, contracts; exception.

The governing body of each county or municipal corporation of this state is authorized to enter into one year, or less, contracts with private nonprofit organizations which are exempt from federal income taxes pursuant to Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code to utilize such organizations to identify, attract, and locate new business and industry into the county or municipality for the purposes of increasing trade, industry, agribusiness, commerce, and tourism and the improvement of employment opportunities within the county or municipality and to otherwise promote the general welfare of the county or municipality; provided, however, that the authority provided under this Code section shall not affect or in any way apply to any contract under Code Section 48-13-51 regarding the expenditure of proceeds collected under Article 3 of Chapter 13 of Title 48 unless that contract is executed by the governing body of a county in which is imposed, prior to January 1, 2001, the homestead option sales and use tax authorized under Code Section 48-8-102. (Code 1981, § 36-60-14, enacted by Ga. L. 1990, p. 8, § 36; Ga. L. 2001, p. 100, § 1.)

Editor's notes. — Ga. L. 1990, p. 8, § 55, part of an Act to correct errors and omissions in the Code effective February 16, 1990, repealed § 2 of Ga. L. 1988, p. 1954. Ga. L. 1990, p. 8, § 36, codified the subject matter of Ga. L. 1988, p. 1954, § 2 as this Code section.

U.S. Code. — Section 501 of the Internal Revenue Code, referred to in this Code section, is codified as 26 U.S.C. § 501.

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For note on the 2001 amendment to O.C.G.A. § 36-60-14, see 18 Ga. St. U. L. Rev. 189 (2001).

36-60-15. Property subject to contract for lease purchase or installment purchase.

Each county or municipality in this state is authorized to accept the title to property subject to a contract for lease purchase or installment purchase and is authorized to transfer title back to the vendor in the name of the county or municipality in the event that the contract is not fully consummated. (Code 1981, § 36-60-15, enacted by Ga. L. 1990, p. 254, § 1.)

Code Commission notes. — Two 1990 Acts added a new Code Section 36-60-14. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L. 1990, p. 8 has retained the Code Section 36-60-14 designation and the Code section enacted by Ga. L. 1990, p. 254 has been redesignated as Code Section 36-60-15.

36-60-15.1. Operation and maintenance of water treatment systems by private entities.

Notwithstanding any other provision of law to the contrary, any county or municipal corporation of this state is authorized, in the discretion of its governing authority, to enter into valid and binding leases and contracts with private persons, firms, associations, or corporations for any period of time not to exceed 20 years to provide for the operation and maintenance of all or a portion of its waste-water treatment system, storm-water system, water system, or sewer system, or any combination of such systems, which leases and contracts may include provisions for the design, construction, repair, reconditioning, replacement, maintenance, and operation of the system, or any combination of such services and functions. If a contract or lease to be awarded pursuant to this Code section includes provisions for the construction of public works, the laws relating to the procurement of such contracts shall also apply; provided, however, that any bonding requirements shall apply only to the construction provisions of the contract or lease. Prior to entering into a lease or contract pursuant to this Code section, the governing authority shall solicit competitive sealed proposals. The governing authority shall first establish criteria for evaluation of any applicants submitting proposals on such leases or contracts for the purpose of assisting the governing authority in making a review of such applicants' previous performance on projects of comparable magnitude, the environmental compliance record of such applicants, and any relevant civil or criminal penalties incurred by such applicants during the five years immediately preceding the execution of the lease or contract. The governing authority shall take into consideration such information to assist it in determining the eligibility of any applicant. The award of a lease or contract pursuant to this Code section shall be made to the responsible and responsive applicant whose proposal is determined in writing to be the most advantageous to the governmental entity, taking into consideration the evaluation factors set forth in the request for proposals. All information required by the county or municipality pursuant to this Code section shall be provided by the applicant under oath. For purposes of this Code section, "applicant" means any individual, firm, association, or corporation submitting a proposal on such leases or contracts. (Code 1981, § 36-60-15.1, enacted by Ga. L. 1999, p. 80, § 1; Ga. L. 2000, p. 837, § 1.)

Cross references. — Water resources, T. 12, C. 5.

36-60-16. Separate approval of municipal and county consolidation by referendum.

No municipal and county consolidation shall become effective unless such consolidation is separately approved by a majority of the qualified voters voting in a referendum thereon in each affected county or counties and in each affected municipality or municipalities located within such county or counties containing at least 10 percent of the population of the county participating in the consolidation. No municipal and county consolidation approved pursuant to this Code section shall include within the consolidated government any municipality located within a county containing less than 10 percent of the population of such county unless such consolidation is separately approved by a majority of the qualified voters voting in a referendum thereon in such municipality. Referendums held pursuant to this Code section shall be conducted in accordance with the provisions and requirements of Title 21. (Code 1981, § 36-60-16, enacted by Ga. L. 1993, p. 394, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Meaning of "county." — "County", as used in O.C.G.A. § 36-60-16, means the whole county, not just the unincorporated portion thereof. 1995 Op. Att'y Gen. No. U95-5.

36-60-17. Water supplier's cut off of water to premises because of indebtedness of prior owner, occupant, or lessee prohibited; records required; limited liens for unpaid charges for water, gas, sewerage service, or electricity.

(a) No public or private water supplier shall refuse to supply water to any single or multifamily residential property to which water has been furnished through the use of a separate water meter for each residential unit on application of the owner or new resident tenant of the premises because of the indebtedness of a prior owner, prior occupant, or prior lessee to the water supplier for water previously furnished to such premises.

(b) For each new or current account to supply water to any premises or property, the public or private water supplier shall maintain a record of identifying information on the user of the water service and shall seek reimbursement of unpaid charges for water service furnished initially from the person who incurred the charges.

(c) A public or private water supplier shall not impose a lien against real property to secure unpaid charges for water furnished unless the owner of such real property is the person who incurred the charges.

(d) A public or private supplier of gas, sewerage service, or electricity shall not impose a lien against real property to secure unpaid charges

for gas, sewerage service, or electricity unless the owner of such real property is the person who incurred the charges. (Code 1981, § 36-60-17, enacted by Ga. L. 1994, p. 1957, § 1.)

Law reviews. — For annual survey on local government law, see 61 Mercer L. Rev. 255 (2009). For annual survey on real property law, see 61 Mercer L. Rev. 301 (2009).

JUDICIAL DECISIONS

Pre-emption of city ordinance as to discontinuance of water service. — Pursuant to the uniformity clause of Ga. Const. 1983, Art. III, Sec. VI, Para. IV(a), § 154-120(1) of the Code of Ordinances of the City of Atlanta, Ga., which authorized the discontinuance of water service until a bill was paid, was pre-empted by O.C.G.A. § 36-60-17(a), which did not allow a supplier to refuse to supply water to a water meter because of a prior owner's indebtedness. Fed. Home Loan Mortg. Corp. v. City of Atlanta, 285 Ga. 189, 674 S.E.2d 905 (2009).

Statute not applicable to commercial property. — Trial court properly granted summary judgment to a city on a property owner's claims that the city unlawfully refused to supply water service to the owner's commercial property until the former tenant's water service charges were paid as the prohibition against refusing to supply water to certain property did not apply to non-residential property under O.C.G.A. § 36-60-17(a). Solid Equities, Inc. v. City of Atlanta, 308 Ga. App. 895, 710 S.E.2d 165 (2011).

City ordinance properly permitted heightened status lien. — Section 154-120 of the Code of Ordinances of the City of Atlanta, Ga., was not in conflict with O.C.G.A. § 36-60-17(c) as the ordinance expressly recognized that the city's ability to impose a lien on real property on the basis of unpaid water bills for service to that property was limited by § 36-60-17, which only granted a heightened-status lien for unpaid water charges incurred by the owner as opposed to a non-owner occupant. Fed. Home Loan Mortg. Corp. v. City of Atlanta, 285 Ga. 189, 674 S.E.2d 905 (2009).

36-60-17.1. Localities prohibited from requiring connection with or use of water supplied by a public water system except when other water unfit; charges or fees for services made available but not used prohibited; applicability.

(a) No county, municipality, or local authority shall require a single-family residential property owner or farm served by a private well to connect with or use water supplied by a public water system, except where necessary to preclude the use of water obtained from such private well that is demonstrably unfit for human consumption or other intended use; nor shall it require such single-family residential property owner or farm whose water lines are not connected with such public water system to pay any charge or fee for water supply services made available but not used.

(b) Nothing in subsection (a) of this Code section shall preclude the repair or maintenance of a well serving a single-family residence so as to meet the requirements for allowing continued use of the same by a

single-family residential property owner or farm without connecting to a public water system or payment of charges or fees in accordance with subsection (a) of this Code section. Such repairs shall be the sole responsibility of such owner.

(c) Subsections (a) and (b) of this Code section shall not apply to:

(1) Any public water system having more than a total of 70,000 active service connection accounts or more than 200 such accounts per square mile of total area served;

(2) A public water system with respect to a single-family residential property owner or farm who has been mailed written notice to his or her address of record on the property tax rolls by the appropriate county, municipality, or local authority by certified mail of his or her right to opt out of connecting with such system and paying charges or fees for system services made available but not used, if such property owner did not notify the county, municipality, or local authority in writing on a form provided thereby of his or her decision to exercise that option within 45 days after mailing of such notice by the county, municipality, or local authority;

(3) Any project of a public water system for which revenue bonds have been validated, issued, and sold prior to January 1, 2008; or

(4) Any public water system funded primarily through a federal or state grant that contains stipulations in such grant requiring the county, municipality, or local authority to levy a charge or fee for water supply services made available but not used. For all state grants, loans, or contracts for services issued on and after July 1, 2007, no state grant, loan, or contract for services funding any project of a public water system shall contain any stipulations requiring a county, municipality, or local authority to levy a charge or fee for water supply services made available but not used or requiring a county, municipality, or local authority to require single-family property owners or farms to connect with or use water supplied by a public water system, except where necessary to preclude the use of water obtained from another source that is demonstrably unfit for human consumption or other intended use. For the purposes of this paragraph, a federal grant is defined as money provided directly to a county or municipality. Federal money provided to a revolving loan fund or to the Georgia Environmental Finance Authority or such other mechanism shall not be considered a federal grant. (Code 1981, § 36-60-17.1, enacted by Ga. L. 2007, p. 737, § 2/HB 247; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted "Georgia Environmental Finance Authority" for "Georgia Environmental Facilities Authority" near the end of the last sentence of paragraph (c)(4).

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

36-60-18. Obtaining real property within adjoining county which will be exchanged for federal property.

No county or municipality within the county shall purchase or accept title to any real property located in an adjoining county, which property will be exchanged for certain property belonging to the federal government as authorized by federal law, without the written consent of the governing authority of such adjoining county wherein the real property is located; provided, however, that the provisions of this Code section shall not apply to the exercise of eminent domain by a county or municipality as authorized under the Constitution or other provisions of law; provided, further, that the provisions of this Code section shall not apply to any agreement entered into by two or more counties, municipal corporations, consolidated governments, or development authorities or any combination thereof prior to July 1, 1994, nor shall the transfer of any land pursuant to any such agreement be affected by this Code section. (Code 1981, § 36-60-18, enacted by Ga. L. 1994, p. 1940, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, this Code section, originally designated as Code Section 36-60-16, was redesignated as Code Section 36-60-18.

36-60-19. Dispatch centers; required training for communications officers; exceptions; penalty for noncompliance.

(a) On and after January 1, 1999, every dispatch center operated by any county or municipality to receive, process, or transmit public safety information and dispatch law enforcement officers, firefighters, medical personnel, or emergency management personnel shall comply with the requirements of this Code section. Each such dispatch center shall have on duty at all times at least one communications officer who is certified as having been trained in the use of telecommunications devices for the deaf (TDD's), as provided for in subsection (d) of Code Section 35-8-23. However, a dispatch center which is staffed by ten or fewer communications officers shall be considered in compliance with this Code section; provided, however, that on and after January 1, 1999, no dispatch center shall be permitted to employ any additional or replacement communications officers who are not certified as having been trained in the use of telecommunications devices for the deaf (TDD's) as provided for in subsection (d) of Code Section 35-8-23.

(b) On and after January 1, 1999, no monthly 9-1-1 charge provided for in Code Section 46-5-133 may be imposed for the support of any dispatch center unless such dispatch center is in compliance with the

requirements of this Code section. (Code 1981, § 36-60-19, enacted by Ga. L. 1998, p. 540, § 2; Ga. L. 2005, p. 660, § 6/HB 470.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, Code Section 36-60-19 as enacted by Ga. L. 1998, p. 850, § 1, was redesignated as 36-60-20, and Code Section 36-60-19 as enacted by Ga. L. 1998, p. 928, § 1, was redesignated as 36-60-21.

Law reviews. — For review of 1998 legislation relating to state government, see 15 Ga. St. U. L. Rev. 245 (1998).

36-60-20. Political subdivisions have no liability for losses from any failure or malfunction of computer software.

(a) As used in this Code section, the term "political subdivision of the state" means any office, agency, department, commission, board, division, and institution of any county or municipality of the State of Georgia.

(b) A political subdivision of the state shall have no liability for losses from any failure or malfunction occurring before December 31, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but the plan or design or both for identifying and preventing the failure or malfunction was prepared in substantial compliance with generally accepted computer and information system design standards in effect at the time of the preparation of the plan or design. (Code 1981, § 36-60-20, enacted by Ga. L. 1998, p. 850, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, Code Section 36-60-19 as enacted by Ga. L. 1998, p. 850, § 1, was redesignated as 36-60-20.

36-60-21. Contracts with private companies to construct and operate private toll roads and bridges to facilitate public transportation without additional tax revenues.

(a) The General Assembly finds that allowing local government to license, contract with, or both license and contract with private companies to finance, construct, maintain, improve, own, or operate, or any combination thereof, private toll roads and bridges can provide significant public benefits to the citizens of this state in facilitating transportation of the general public without the need for additional public tax revenues. The General Assembly also finds that such facilitation of transportation of the public by private enterprise is an important public purpose and function. The General Assembly further finds that general law impediments to such arrangements should be removed. To imple-

ment these findings, this Code section shall control the subject matter thereof notwithstanding any other provision of law to the contrary.

(b) As used in this Code section, the term:

(1) "Local government" means any county or municipality of this state.

(2) "Person" means any natural person, partnership, corporation, trust, association, or any other legal entity, other than the state or a political subdivision thereof.

(3) "Project" means a toll road or toll bridge.

(c) A local government may contract with, license, or both contract with and license a person to finance, construct, maintain, improve, own, or operate, or any combination thereof, a project along the boundaries of or within such local government. In furtherance of the enhanced transportation for its residents and others which such project can provide, such local government may finance, construct, maintain, improve, own, or operate, or any combination thereof, within the boundaries of such local government any necessary highway approaches to such project. Such contract, license, or contract and license may be executed by a local government without complying with the contracting requirements of Chapter 10 of this title. A contract, license, or contract and license authorized by this subsection may extend for any period as determined by the local government notwithstanding the provisions of Code Section 36-60-13 or any other provision of law. Such contract, license, or contract and license shall not impose any debt upon such local government unless that debt is incurred in conformity with Article IX, Section V of the Constitution. Such local government shall not lend its credit as part or in furtherance of such contract, license, or contract and license. Neither the local government nor the state shall make any improvements or otherwise expend public funds upon property owned by or leased to a person for a project.

(d) Any property or rights therein of another person which are necessary for the project authorized by such contract, license, or contract and license may be procured by such local government exercising its power of eminent domain on behalf of and for the project and may be leased or sold to the person whom the local government has contracted with, licensed, or contracted with and licensed for such project, unless such property or rights therein are owned by the state or a political subdivision of the state. In all other respects such power of eminent domain shall conform to the requirements imposed by law. Any such property or rights therein owned by the state or a political subdivision thereof may be leased by such owner for any period, as determined by such owner, or sold by such owner and may only be leased or sold for fair market value. In determining such valuation, at

least three written appraisals of the value of the property or rights therein shall be obtained by the owning state or political subdivision. Those appraisals shall be made by any person familiar with property values in the area where the property is situated, at least one of which appraisals shall be made by a member of a nationally recognized appraisal organization. If the state is the owner, such lease or sale shall be executed by the State Properties Commission and may be executed without competitive bidding upon written determination by that commission that such lease or sale is necessary for the project and the public interest is served by such use of state property; provided, however, that if the Department of Transportation is the owner, such lease or sale shall be handled by the Department of Transportation in accordance with its normal procedures for the acquisition and disposal of department rights of way.

(e) A contract authorized under this Code section shall provide, in addition to any other requirements:

(1) The right to finance, construct, maintain, improve, own, or operate, or any combination thereof, the project and that such right shall be irrevocable but need not be exclusive;

(2) The right to own the project and to set, fix, change, and collect tolls;

(3) Rights of assignment and amendment;

(4) The duty of the person to provide for design and construction of the project and standards therefor;

(5) Provisions for maintenance and operation, liability, and other operational matters;

(6) Rights and duties of the parties regarding connecting roads, highways, streets, bridges, or transitways; and

(7) Such other matters as shall be deemed appropriate or necessary.

(f) A project operated pursuant to a contract, license, or contract and license authorized under this Code section shall not be subject to regulation as to toll amounts or any other matters by the Public Service Commission, the Department of Transportation, or the State Road and Tollway Authority, except those matters related to the regulation of safety or hazardous materials as provided for in Title 46.

(g) Nothing in this Code section shall limit the exercise of the power of eminent domain by the state or a local government regarding a project. (Code 1981, § 36-60-21, enacted by Ga. L. 1998, p. 928, § 1; Ga. L. 1999, p. 81, § 36; Ga. L. 2001, p. 1251, § 2-1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, Code Section 36-60-19 as enacted by Ga. L. 1998, p. 928, § 1, was redesignated as 36-60-21.

36-60-22. Rock quarry operations prohibited under certain circumstances.

Any other provision of law to the contrary notwithstanding, if the director of the Environmental Protection Division of the Department of Natural Resources determines after a scientific analysis that such a quarry location has significant adverse impact on the water system, no person may commence the operation of a limestone or dolostone rock quarry within eight miles of any well or spring accessing an underground source of water which provides water to any county or municipality in an amount of at least 50 percent of such county's or municipality's water supply or two million gallons per day, whichever is less. (Code 1981, § 36-60-22, enacted by Ga. L. 1999, p. 748, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, Code Section 36-60-19 as enacted by Ga. L. 1999, p. 1248, § 1, was redesignated as 36-60-23.

36-60-23. Volunteer firefighters for counties and municipalities.

(a) As used in this Code section, the term "volunteer firefighter" means a person who is a volunteer firefighter, as defined in Code Section 47-7-1, relating to definitions regarding the Georgia Firefighters' Pension Fund, and who receives no compensation for services as a volunteer firefighter other than:

(1) Actual expenses incurred;

(2) A per diem for services;

(3) Contributions to the Georgia Firefighters' Pension Fund;

(4) Workers' compensation coverage under Chapter 9 of Title 34; or

(5) Any combination of items specified in paragraphs (1) through (4) of this subsection.

(b) Notwithstanding the provisions of Code Section 36-30-4, 45-2-2, or any other provision of law to the contrary, a volunteer firefighter for a county or municipal corporation shall be eligible to serve as a member of the governing authority of that county or municipal corporation.

(c) Nothing in this Code section shall require a county or municipal governing authority to make any of the payments or offer the benefits to volunteer firefighters specified in subsection (a) of this Code section. (Code 1981, § 36-60-23, enacted by Ga. L. 1999, p. 1248, § 1.)

Cross references. — Firefighter appreciation day, § 1-4-12. Firefighter standards and training, T. 25, C. 4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, Code Section 31-60-19 as enacted by Ga. L. 1999, p. 1248, § 1, was redesignated as 36-60-23, and "Fund" was substituted for "fund" in paragraph (a)(3).

36-60-24. Sale of products or services.

(a) The governing authority of a county or municipal corporation shall not prohibit the sale of products or services which products or services are lawful under subsection (b) of Code Section 25-10-1, unless such prohibition is expressly authorized by the general law of the state.

(b) If the sale of a product or service is regulated by subsection (b) of Code Section 25-10-1, the governing authority of a county or municipal corporation shall not enact additional regulation of the sale of such product or service, unless such additional regulation is expressly authorized by general law.

(c) Any ordinance enacted before, on, or after July 1, 2006, by a county or municipal corporation in violation of this Code section is void. (Code 1981, § 36-60-24, enacted by Ga. L. 2006, p. 544, § 1/HB 304.)

36-60-25. Certificates of public necessity and convenience and medallions for taxicabs.

(a) Each county and municipal corporation may require the owner or operator of a taxicab or vehicle for hire to obtain a certificate of public necessity and convenience or medallion in order to operate such taxicab or vehicle for hire within the unincorporated areas of the county or within the corporate limits of the municipal corporation, respectively, and may exercise its authority under Code Section 48-13-9 to require such owners or operators to pay a regulatory fee to the county or municipal corporation. The General Assembly finds and declares that any county or municipality exercising the powers granted in this Code section is legitimately concerned with the qualifications and records of drivers of taxicabs and other vehicles for hire; with the location, accessibility, and insured state of companies operating taxicabs and other vehicles for hire; and with the safety and comfort of taxicabs and other vehicles for hire. Without limitation, each such county or municipality may exercise the powers granted in this Code section by ordinance to the same extent as the ordinances reviewed by the Georgia Court of Appeals in the case of Hadley v. City of Atlanta, 232 Ga. App. 871, 875 (1998), and each certificate of public convenience and necessity issued under those ordinances shall remain in full force and effect.

(b) Each certificate of public necessity and convenience or medallion issued at any time by a county or municipal corporation shall be fully

transferable pursuant to a purchase, gift, bequest, or acquisition of the stock or assets of a corporation to any person otherwise meeting the requirements of the applicable local ordinance. Each such certificate of public necessity and convenience or medallion may be used as collateral to secure a loan and each lending institution making such a loan shall have all rights of secured parties with respect to such loan. (Code 1981, § 36-60-25, enacted by Ga. L. 2007, p. 677, § 1/HB 519.)

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

36-60-26. Unlawful to issue backdated license, permit, or other authorizing document; documents issued in violation void in entirety; criminal penalty for violations.

(a) It shall be unlawful for any county, municipal corporation, or other issuing authority to issue any backdated license, permit, or other authorizing document, including but not limited to any building permit, sign permit, occupation tax certificate, zoning action, subdivision of land, final plat, or other similar authorization, in any territorial or geographic area which, due to the formation of a county, incorporation of a municipality, annexation or deannexation of territory, or other action, is no longer within the regulatory jurisdiction of said issuing authority. For purposes of this Code section, a license, permit, or other authorizing document shall be considered to be backdated if it in any manner purports to have been issued or have become effective prior to its actual date of issuance.

(b) A license, permit, or other authorizing document in violation of this Code section shall be void in its entirety, and no person shall acquire any rights thereunder.

(c) Any county or municipal officer or employee who knowingly violates this Code section shall be upon conviction guilty of a misdemeanor. (Code 1981, § 36-60-26, enacted by Ga. L. 2008, p. 154, § 1/HB 975.)

Editor's notes. — Ga. L. 2008, p. 154, § 2/HB 975, not codified by the General Assembly, provides: "The General Assembly declares its belief that this Act is declaratory of previously existing law; and the passage of this Act shall not be construed to imply that prior law was to the contrary."

JUDICIAL DECISIONS

Acquisition of vested rights in permits. — Void county sign ordinance could not be used as the basis for the denial of sign companies' applications for permits to construct billboards, and the invalidity of the ordinance resulted in there being no valid restriction on the construction of billboards in the county. Accordingly, the sign companies obtained vested rights in the issuance of the billboard construction

permits which the companies sought before city ordinances were enacted. Fulton County v. Action Outdoor Adver., JV, LLC, 289 Ga. 347, 711 S.E.2d 682 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 36-60-26 are designated as offenses for which those charged are to be fingerprinted. 2009 Op. Att'y Gen. No. 2009-1.

CHAPTER 61

URBAN REDEVELOPMENT

Sec.
36-61-1. Short title.
36-61-2. Definitions.
36-61-3. Legislative findings and declaration of necessity.
36-61-3.1. "Public use" defined; eminent domain to be exercised solely for public use.
36-61-4. Encouragement of private enterprise.
36-61-5. Resolution of necessity prerequisite to exercise of powers.
36-61-6. Formulation of workable program.
36-61-7. Preparation of redevelopment plan; approval; modification; effect of approval.
36-61-8. Powers of municipalities and counties generally.
36-61-9. Power of eminent domain; conditions; title acquired.
36-61-10. Disposal of property in redevelopment area generally; notice and bidding procedures; exchange with veterans' organization; temporary operation of property.
36-61-11. Repair, closing, and demolition of dwellings unfit for human habitation.
36-61-12. Issuance of bonds; payment; tax exemption; form; terms; sale; signatures; negotiability; effect of recitation on bonds.
36-61-13. Bonds declared legal investments.
36-61-14. Exemption of property from execution, levy, and sale; tax exemption.
36-61-15. Presumption as to title of purchaser of property from municipality or county.
36-61-16. Assistance by public bodies generally; powers of public bodies; powers of municipalities and counties.
36-61-17. Exercise of redevelopment powers by municipalities and counties; delegation to redevelopment agency or housing authority.
36-61-18. Creation of agency; appointment of board of commissioners; compensation, term, and certificate; annual report; removal of commissioners.
36-61-19. Interest by public official or employee or employee of redevelopment agency in redevelopment project or property; disclosure; eligibility of commissioners and officers of housing authorities for other office.

Cross references. — Community redevelopment generally, Ga. Const. 1983, Art. IX, Sec. II, Para. VII. Clearance and rehabilitation of blighted areas generally, T. 8, C. 4.

Administrative rules and regulations. — Opportunity zone job tax credit program regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Opportunity Zone Tax Credit Program Regulations, Chapter 110-24.

Law reviews. — For note discussing meaning of "public use" and analyzing theories of excess condemnation, see 18 Mercer L. Rev. 274 (1966).

JUDICIAL DECISIONS

This chapter provides for rehabilitation, clearance, and redevelopment of slums in cities and towns in the state. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247 (1980) (see O.C.G.A. Ch. 61, T. 36).

36-61-1. Short title.

This chapter shall be known and may be cited as the "Urban Redevelopment Law." (Ga. L. 1955, p. 354, § 1.)

Editor's notes. — Ga. 1976, p. 946, § 4, not codified by the General Assembly, provides that all powers, privileges, duties, or immunities now or heretofore granted to municipalities by the Urban Redevelopment Law (this chapter), and all Acts amendatory thereof, are granted and conferred upon every county of this state.

Law reviews. — For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007) and 60 Mercer L. Rev. 457 (2008).

JUDICIAL DECISIONS

Housing Authority could sell acquired property to private party. — Georgia's Urban Redevelopment Law, O.C.G.A. § 36-61-1 et seq., authorized a housing authority to exercise eminent domain to acquire and redevelop urban property found to be a "slum area;" the housing authority's disposition of condemned property was authorized, and the housing authority was entitled to summary judgment on a former owner's claim that property had been acquired and then sold to a private party. Talley v. Housing Auth., 279 Ga. App. 94, 630 S.E.2d 550 (2006).

Cited in City of Stockbridge v. Meeks, 283 Ga. App. 343, 641 S.E.2d 584 (2007).

RESEARCH REFERENCES

ALR. — Application of *Kelo v. City of New London,* 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005), to "Public Use" restrictions in federal and state constitutions takings clauses and eminent domain statutes, 21 ALR6th 261.

36-61-2. Definitions.

As used in this chapter, the term:

(1) "Agency" or "urban redevelopment agency" means a public agency created by Code Section 36-61-18.

(2) "Area of operation" means the area within the corporate limits of the municipality or county and the area within five miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated municipality or another county unless a resolution is adopted by the governing body of such other municipality or county declaring a need therefor.

(3) "Board" or "commission" means a board, commission, department, division, office, body, or other unit of the municipality or county.

(4) "Bonds" means any bonds (including refunding bonds), notes, interim certificates, certificates of indebtedness, debentures, or other obligations.

(5) "Clerk" means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.

(6) "County" means any county in this state.

(7) "Downtown development authority" means an authority created pursuant to Chapter 42 of this title.

(8) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Housing authority" means a housing authority created by and established pursuant to Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law."

(10) "Local governing body" means the council or other legislative body charged with governing the municipality and the board of commissioners or governing authority of the county.

(11) "Mayor" means the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

(12) "Municipality" means any incorporated city or town in the state.

(13) "Obligee" includes any bondholder, agents, or trustees for any bondholders, or any lessor demising to the municipality or county property used in connection with an urban redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality or county.

(14) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(15) "Public body" means the state or any municipality, county, board, commission, authority, district, housing authority, urban redevelopment agency, or other subdivision or public body of the state.

(16) "Real property" includes all lands, including improvements and fixtures thereon and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, right, and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise.

(17) "Rehabilitation" or "conservation" may include the restoration and redevelopment of a slum area or portion thereof, in accordance with an urban redevelopment plan, by:

(A) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(B) Acquisition of real property and rehabilitation or demolition and removal of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary, or unsafe conditions, to lessen density, to reduce traffic hazards, to eliminate obsolete or other uses detrimental to the public welfare, to otherwise remove or prevent the spread of slums or deterioration, or to provide land for needed public facilities;

(C) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter; and

(D) The disposition of any property acquired in such urban redevelopment area, including sale, initial leasing or retention by the municipality or county itself, at its fair value for uses in accordance with the urban redevelopment plan.

(18) "Slum area" means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age, or obsolescence; inadequate provision for ventilation, light, air, sanitation, or open spaces; high density of population and overcrowding; existence of conditions which endanger life or property by fire and other causes; or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime and is detrimental to the public health, safety, morals, or welfare. "Slum area" also means an area which by reason of the presence of a substantial number of slum, deteriorated, or deteriorating structures; predominance of defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; the existence of conditions which endanger life or property by fire and other causes; by having development impaired by airport or transportation noise or by other environmental hazards; or any combination of such factors substantially impairs or arrests the sound growth of a municipality or county, retards the provisions of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(19) "Slum clearance and redevelopment" may include:

(A) Acquisition of a slum area or portion thereof;

(B) Rehabilitation or demolition and removal of buildings and improvements;

(C) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter in accordance with the urban redevelopment plan; and

(D) Making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality or county itself) at its fair value for uses in accordance with the urban redevelopment plan.

(20) "Urban redevelopment area" means a slum area which the local governing body designates as appropriate for an urban redevelopment project.

(21) "Urban redevelopment plan" means a plan, as it exists from time to time, for an urban redevelopment project, which plan shall:

(A) Conform to the general plan for the municipality or county as a whole; and

(B) Be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban redevelopment area; zoning and planning changes, if any; land uses; maximum densities; building requirements; and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(22) "Urban redevelopment project" may include undertakings or activities of a municipality or county in an urban redevelopment area for the elimination and for the prevention of the development or spread of slums and may involve slum clearance and redevelopment in an urban redevelopment area, rehabilitation or conservation in an urban redevelopment area, or any combination or part thereof, in accordance with an urban redevelopment plan. Although the power of eminent domain may not be exercised for such purposes, such undertakings or activities may include:

(A) Acquisition, without regard to any requirement that the area be a slum or blighted area, of air rights in an area consisting of lands and highways, railway or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area and over which air rights sites are to be developed for the elimination of such blighting influences and for the provision of housing and related facilities and uses designed for, and limited primarily to, families and individuals of low or moderate income; and

(B) Construction of foundations and platforms necessary for the provision of air rights sites of housing and related facilities and uses designed for, and limited primarily to, families and individuals of low or moderate income or construction of foundations necessary for the provision of air rights sites for development of nonresidential facilities. (Ga. L. 1955, p. 354, § 19; Ga. L. 1963, p. 644, § 1; Ga. L. 1971, p. 445, §§ 3-5; Ga. L. 1976, p. 946, §§ 2, 3; Ga. L. 1982, p. 3, § 36; Ga. L. 1992, p. 2533, §§ 11, 12.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "Authorities" was substituted for "Authority" in paragraph (9).

JUDICIAL DECISIONS

Cited in Allen v. City Council, 215 Ga. 778, 113 S.E.2d 621 (1960); Waller v. Clayton County, 200 Ga. App. 706, 409 S.E.2d 561 (1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 1 et seq., 16, 19.

C.J.S. — 39A C.J.S., Health and Environment, §§ 62, 63. 62 C.J.S., Municipal Corporations, §§ 1 et seq., 268, 562 et seq. 64A C.J.S., Municipal Corporations, § 1645.

ALR. — What constitutes "Blighted Area" within urban renewal and redevelopment statutes, 45 ALR3d 1096.

36-61-3. Legislative findings and declaration of necessity.

(a) It is found and declared that there exist in municipalities and counties of this state slum areas, as defined in paragraph (18) of Code Section 36-61-2, which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of this state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities and counties, retards the provision of housing accommodations, aggravates traffic problems, and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums is a matter of state policy and state concern, in order that the state and its municipalities and counties shall not continue to be endangered by areas which are local centers of disease, promote juvenile delinquency, and, while contributing little to the tax income of the state and its municipalities and counties, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

(b) It is further found and declared that certain slum areas or portions thereof may require acquisition, clearance, and disposition,

subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that the other areas or portions thereof, through the means provided in this chapter, may be susceptible of conservation or rehabilitation in such a manner that the conditions and evils enumerated in subsection (a) of this Code section may be eliminated, remedied, or prevented and that, to the extent that is feasible, salvable slum areas should be conserved and rehabilitated through voluntary action and the regulatory process.

(c) It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain may be exercised. The necessity, in the public interest, for the provisions enacted in this chapter is declared as a matter of legislative determination. (Ga. L. 1955, p. 354, § 2; Ga. L. 1993, p. 91, § 36.)

JUDICIAL DECISIONS

Constitutionality. — The Urban Redevelopment Law is expressly authorized by the Constitution, and it and the acts proposed to be taken thereunder, and in conformity therewith, are not unconstitutional. Bailey v. Housing Auth., 214 Ga. 790, 107 S.E.2d 812 (1959).

Cited in Thompson v. Crownover, 259 Ga. 126, 381 S.E.2d 283 (1989).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 65 et seq.

ALR. — Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance), 130 ALR 1069; 172 ALR 966.

36-61-3.1. "Public use" defined; eminent domain to be exercised solely for public use.

(a) As used in this Code section, the term "public use" shall have the meaning specified in Code Section 22-1-1.

(b) Any exercise of the power of eminent domain under this chapter must:

(1) Be for a public use; and

(2) Be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in Code Section 22-1-10. (Code 1981, § 36-61-3.1, enacted by Ga. L. 2006, p. 39, § 22/HB 1313.)

Editor's notes. — Ga. L. 2006, p. 39, § 1/HB 1313, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'The Landown-

er's Bill of Rights and Private Property Protection Act.'"

Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that this Code section shall apply to those condemnation proceedings filed on or after February 9, 2006, where title has not vested in the condemning authority unless constitutionally prohibited.

Law reviews. — For article on 2006 enactment of this Code section, see 23 Ga. St. U. L. Rev. 157 (2006).

36-61-4. Encouragement of private enterprise.

A municipality or county, to the greatest extent it determines to be feasible in carrying out the provisions of this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality or county as a whole, to the rehabilitation or redevelopment of the urban redevelopment area by private enterprise. A municipality or county shall give consideration to this objective in exercising its powers under this chapter, including: the formulation of a workable program; the approval of urban redevelopment plans consistent with the general plan for the municipality or county; the adoption and enforcement of ordinances as provided for in Code Section 36-61-11; the exercise of its zoning powers; the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements; the disposition of any property acquired; and the provision of necessary public improvements. (Ga. L. 1955, p. 354, § 3.)

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 5.

C.J.S. — 39A C.J.S., Health and Environment, §§ 62, 63.

ALR. — Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise, 44 ALR2d 1414.

36-61-5. Resolution of necessity prerequisite to exercise of powers.

No municipality or county shall exercise any of the powers conferred upon municipalities and counties by this chapter until after its local governing body has adopted a resolution finding that:

(1) One or more slum areas exist in such municipality or county; and

(2) The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of the municipality or county. (Ga. L. 1955, p. 354, § 5.)

JUDICIAL DECISIONS

Under this section, it is not required that any evidence or proof be taken or considered but simply that a resolution be adopted. This can only mean that the officials concerned exercise the officials' own judgment based upon what the officials know or believe and make their findings. The very nature of matters required to be found by the resolution shows them not capable of being brought under judicial determination. Allen v. City Council, 215 Ga. 778, 113 S.E.2d 621 (1960) (see O.C.G.A. § 36-61-5).

36-61-6. Formulation of workable program.

For the purposes of this chapter, a municipality or county may formulate a workable program for utilizing appropriate private and public resources including those specified in Code Section 36-61-11, to eliminate and prevent the development or spread of slums, to encourage needed urban rehabilitation, to provide for the redevelopment of slum areas, or to undertake such of the aforesaid activities or such other feasible municipal or county activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for the prevention of the spread of slums into areas of the municipality or county which are free from slums, through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation or conservation of slum areas or portions thereof by replanning, removing congestion, providing parks, playgrounds, and other public improvements, encouraging voluntary rehabilitation, and compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of slum areas or portions thereof. (Ga. L. 1955, p. 354, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 16.

36-61-7. Preparation of redevelopment plan; approval; modification; effect of approval.

(a) A municipality or county shall not approve an urban redevelopment plan for an urban redevelopment area unless the governing body, by resolution, has determined such area to be a slum area and designated such area as appropriate for an urban redevelopment project. Authority is vested in every municipality and county to prepare, to adopt, and to revise, from time to time, a general plan for the physical development of the municipality or county as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related munic-

ipal and county planning activities, and to make available and to appropriate the necessary funds therefor. A municipality or county shall not acquire real property for an urban redevelopment project unless the local governing body has approved the urban redevelopment plan in accordance with subsection (d) of this Code section.

(b) The municipality or county may itself prepare or cause to be prepared an urban redevelopment plan; alternatively, any person or agency, public or private, may submit a plan to a municipality or county.

(c) The local governing body of the municipality or county shall hold or shall cause some agency of the municipality or county to hold a public hearing on an urban redevelopment plan or a substantial modification of an approved urban redevelopment plan, after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality or county. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban redevelopment area covered by the plan, and shall outline the general scope of the urban redevelopment project under consideration.

(d) Following such hearing, the local governing body may approve an urban redevelopment plan if it finds that:

(1) A feasible method exists for the relocation of families who will be displaced from the urban redevelopment area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such families;

(2) The urban redevelopment plan conforms to the general plan of the municipality or county as a whole; and

(3) The urban redevelopment plan will afford maximum opportunity, consistent with the sound needs of the municipality or county as a whole, for the rehabilitation or redevelopment of the urban redevelopment area by private enterprise.

(e) An urban redevelopment plan may be modified at any time, provided that, if modified after the lease or sale by the municipality or county of real property in the urban redevelopment project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser or his successor or successors in interest may be entitled to assert. Any proposed modification which will substantially change the urban redevelopment plan as previously approved by the local governing body shall be subject to the requirements of this Code section, including the requirement of a public hearing, before it may be approved.

(f) Upon the approval of an urban redevelopment plan by a municipality or county, the provisions of the plan with respect to the future

use and building requirements applicable to the property covered by the plan shall be controlling with respect thereto. (Ga. L. 1955, p. 354, § 6; Ga. L. 1982, p. 3, § 36.)

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 16, 20.

C.J.S. — 39A C.J.S., Health and Environment, § 63.

36-61-8. Powers of municipalities and counties generally.

Every municipality and every county shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others granted in this chapter:

(1) To undertake and carry out urban redevelopment projects within its area of operation; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate slum clearance and urban redevelopment information;

(2) To provide, to arrange, or to contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with an urban redevelopment project and to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements, provided that neither the municipality or county itself nor an urban redevelopment agency or housing authority or downtown development authority acting pursuant to an election under Code Section 36-61-17 shall provide, install, or construct any public utility of the same kind or character as an existing utility operating in the municipality or county if such existing utility is providing reasonably adequate and proper service, as determined by the Public Service Commission; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or to compliance with labor standards in the undertaking or carrying out of an urban redevelopment project, and to include, in any contract let in connection with such a project, provisions to fulfill such conditions as it may deem reasonable and appropriate;

(3) Within its area of operation, to enter upon any building or property in any urban redevelopment area in order to make surveys, appraisals, soundings, or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is

denied or resisted; to acquire, by purchase, lease, option, gift, grant, bequest, devise, or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality or county against any risks or hazards, and to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality or county or other public body exercising powers under this chapter in the exercise of such functions with respect to an urban redevelopment project, unless the General Assembly shall specifically so state;

(4) To invest any urban redevelopment project funds held in reserves or sinking funds or any such funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control; and to redeem such bonds as have been issued pursuant to Code Section 36-61-12 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled;

(5) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A municipality or county may include in any contract for financial assistance with the federal government for an urban redevelopment project such conditions imposed pursuant to federal law as the municipality or county may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(6) Within their area of operation, to make or have made all plans necessary to the carrying out of the purposes of this chapter and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation:

(A) A general plan for the locality as a whole;

(B) Urban redevelopment plans;

(C) Plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, to include

but not to be limited to making loans and grants from funds received from the federal government, as well as from funds received from the repayment of such loans and interest thereon, to persons, public or private, owning private housing for the purpose of financing the rehabilitation of such housing;

(D) Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and

(E) Appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban redevelopment projects.

The municipality or county is authorized to develop, test, and report methods and techniques and to carry out demonstrations and other activities for the prevention and elimination of slums and to apply for, accept, and utilize grants of funds from the federal government for such purposes;

(7) To prepare plans and provide reasonable assistance for the relocation of families displaced from an urban redevelopment area, to the extent essential for acquiring possession of and clearing such area or parts thereof to permit the carrying out of the urban redevelopment project;

(8) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter and to levy taxes and assessments for such purposes; to close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; to plan or replan, zone, or rezone any part of the municipality or county or make exceptions from building regulations; and to enter into agreements, under Code Section 36-61-17, with a housing authority, a downtown development authority, or an urban redevelopment agency vested with urban redevelopment project powers, which agreements may extend for up to 50 years respecting action to be taken by such municipality or county pursuant to any of the powers granted by this chapter. The reasonable costs of removing, relocating, and rearranging public utility facilities within urban renewal areas may constitute a cost of carrying out the purposes of this chapter, and every municipality and county may, in their discretion, pay such reasonable costs or any portion thereof;

(9) Within their areas of operation, to organize, coordinate, and direct the administration of the provisions of this chapter as they apply to such municipality or county, in order that the objective of remedying slums and preventing the causes thereof within the

municipality or county may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or county or to reorganize existing offices in order to carry out such purpose most effectively.

(10) To exercise all or any part or combination of powers granted in this Code section. (Ga. L. 1955, p. 354, § 7; Ga. L. 1963, p. 644, § 2; Ga. L. 1976, p. 946, § 1; Ga. L. 1992, p. 2533, § 13.)

JUDICIAL DECISIONS

Lease of facilities to private enterprises for commercial use authorized. — Under the Urban Redevelopment Law, O.C.G.A. § 36-61-1 et seq., the city may provide facilities in connection with an urban redevelopment project, including facilities leased to private enterprises for commercial use. Nations v. Downtown Dev. Auth., 256 Ga. 158, 345 S.E.2d 581 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Loans of federal money to private housing owners not allowed. — Municipalities and counties to which the Urban Redevelopment Law applies may not, pursuant to this section, make loans or grants from moneys received from the federal government under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.) to owners of private housing for the purpose of financing the rehabilitation of such housing. 1975 Op. Att'y Gen. No. 75-119 (see O.C.G.A. § 36-61-8).

Repair or disposal of dwellings outside redevelopment area. — Municipality may acquire, rehabilitate, and dispose of substandard residential dwellings to the housing authority when such dwellings are outside an officially declared urban redevelopment area, if such activities are designed to provide low-rent housing to persons displaced by activities within such area. 1982 Op. Att'y Gen. No. U82-28.

Repairing low-rent homes for use by persons displaced by an urban redevelopment project, though outside an officially designated urban redevelopment area, would appear to be "in connection with" that project within the meaning of paragraph (2) of O.C.G.A. § 36-61-8. 1982 Op. Att'y Gen. No. U82-28.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 62 et seq. 63 C.J.S., Municipal Corporations, § 1164. 64 C.J.S., Municipal Corporations, §§ 1167, 1279, 1460, 1461. 64A C.J.S., Municipal Corporations, §§ 2016, 2184, 2185, 2276.

ALR. — What are "prevailing wages," or the like, for purposes of state statute requiring payment of prevailing wages on public works projects, 7 ALR5th 400.

Employers subject to state statutes requiring payment of prevailing wages on public works projects, 7 ALR5th 444.

36-61-9. Power of eminent domain; conditions; title acquired.

(a) Except as otherwise provided in subsection (c) of this Code section, a municipality or county shall have the right to acquire, by exercise of the power of eminent domain, any real property which it may deem necessary for its purposes under this chapter, after the

adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. A municipality or county may exercise the power of eminent domain in the manner provided in Title 22; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired, provided that no real property belonging to the municipality, the county, the state, or any political subdivision thereof may be acquired without its consent.

(b) Whenever condemnation proceedings are instituted and carried on by a municipality or county in accordance with subsection (a) of this Code section or through any other method of condemnation provided by law, upon the payment by the municipality or county seeking condemnation of the amount of the award and final judgment on appeal the municipality or county shall become vested with a fee simple indefeasible title to the property to which the condemnation proceedings relate. Such payment may be offset in whole or in part by the amount of any municipal or county tax liens on the condemned property and by any existing special assessments tax liens on the condemned property, including without limitation education or special district taxes collected by the municipality or county; provided, however, that any such setoff shall be subject to any existing tax liens having higher priority pursuant to Code Section 48-2-56 and to the interest in the condemned property of any known beneficiary of a year's support pursuant to former Code Section 53-5-2 as such existed on December 31, 1997, if applicable, or Code Sections 53-3-1, 53-3-2, 53-3-4, 53-3-5, and 53-3-7; provided, further, that where the condemned property is subject to a valid deed to secure debt, such setoff shall only be allowed for tax liens which arose as a result of an assessment against such property. It is declared to be necessary, to enable such municipalities and counties to exercise their powers under this Code section, that upon the condemnation proceedings being had, the municipalities and counties shall become vested with fee simple indefeasible title to the property involved in the proceedings.

(c) Unless the property is to be acquired for the purpose of devoting it to a public use, a municipality or county may not acquire real property through the exercise of the power of eminent domain pursuant to subsection (a) of this Code section until the following conditions and requirements have been met:

(1) The municipality or county which adopted the urban redevelopment plan has approved a resolution authorizing the exercise of the power of eminent domain by the agency to acquire the property;

(2) The municipality or county shall, in writing, notify the owner of the real property proposed to be acquired of the planned rehabilita-

tion of the property as set forth in the urban redevelopment plan for the urban redevelopment area wherein the property is located;

(3) Within 30 days after being so notified, the owner of the property shall have the option of notifying the municipality or county, in writing, of his willingness and intention to rehabilitate and maintain the property in accordance with the urban redevelopment plan. In the event of multiple ownership of the property, unanimous agreement by the owners shall be required; and the failure of any one owner to notify the municipality or county, within the time limitation specified in this paragraph, of his willingness and intention to rehabilitate and maintain the property in accordance with the urban redevelopment plan shall be deemed to be a failure to exercise the option provided in this paragraph; and

(4) The owner of the property may execute an agreement with the municipality or county to rehabilitate the property in accordance with the urban redevelopment plan. Any such agreement shall be as the municipality or county deems necessary and appropriate as to form and content; in connection therewith, the municipality or county shall have the right to require sufficient performance, payment, and completion bonds. In the event that any such owner, at any time, fails to comply with or defaults in the performance of the provisions of the agreement, such property shall no longer be subject to the agreement, the option provided by paragraph (3) of this subsection shall no longer apply, and the property may be acquired by the municipality or county by purchase or through the exercise of the power of eminent domain. In the alternative, the municipality or county may either specifically enforce the agreement, exercise any rights under any bonds which may have been required, and obtain any other legal or equitable relief as may be available to the municipality or county or, if the owner fails to exercise the option to rehabilitate the property or defaults on the agreement to rehabilitate the property, the municipality or county may implement those portions of the urban development plan with respect to such property to the extent the municipality or county deems necessary and the costs of implementing such plan shall be a lien against the property enforceable in the same manner as tax liens. (Ga. L. 1955, p. 354, § 8; Ga. L. 1971, p. 445, §§ 1, 2; Ga. L. 1982, p. 3, § 36; Ga. L. 1992, p. 6, § 36; Ga. L. 1992, p. 2533, § 14; Ga. L. 1994, p. 877, § 1; Ga. L. 1998, p. 128, § 36; Ga. L. 2011, p. 752, § 36/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, in the second sentence of subsection (b), substituted "to former Code Section 53-5-2 as such existed on December 31, 1997," for "to Code Section 53-5-2 of the 'Pre-1998 Probate Code,'" and deleted "of the 'Revised Probate Code of 1998'" following "and 53-3-7".

Law reviews. — For article surveying

developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

For note on the 1994 amendment of this Code section, see 11 Ga. St. U. L. Rev. 212 (1994).

JUDICIAL DECISIONS

Demand that just and adequate compensation be first paid is imperative. It means that such payment covers its value at the time of taking and not its value many rental periods or years prior to the actual institution of condemnation proceedings. Housing Auth. v. Schroeder, 222 Ga. 417, 151 S.E.2d 226 (1966).

Exercise of power of eminent domain under this section must be pursuant to the formulation of an urban redevelopment plan which necessitates the acquisition of specific real property to effectuate its purposes. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247 (1980) (see O.C.G.A. § 36-61-9).

Qualification on right of eminent domain. — Right of the state to obtain private property for the public purpose of urban redevelopment is qualified by the requirement that the property owner must be permitted to develop the owner's land personally in accordance with the proposed plan, if the owner so desires and if the owner has the resources to do so. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247 (1980); Ward v. Housing Auth., 157 Ga. App. 825, 278 S.E.2d 715 (1981).

Requirement of specificity in urban redevelopment plan. — When, pursuant to court order, condemnee was provided with a map showing the proposed use of the condemnee's land, in conjunction with the lands of other owners, as part of a 66,600 square foot warehouse, any requirement of specificity in an urban redevelopment plan was amply satisfied by this information. Waller v. Clayton County, 200 Ga. App. 706, 409 S.E.2d 561, cert. denied, 200 Ga. App. 897, 409 S.E.2d 561 (1991).

Option of landowner to develop himself. — This section gives a private landowner the option of retaining ownership of the land and developing the land in accordance with the urban redevelopment plan when the land was to be put to a nonpublic use. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247 (1980) (see O.C.G.A. § 36-61-8).

Term "multiple ownership" as used in this section refers to a situation when a particular parcel within the tract to be condemned is owned by more than one person, rather than to all owners of all parcels within the tract. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247 (1980) (see O.C.G.A. § 36-61-8).

Term "property" as used in this section refers to each individual parcel within the tract to be condemned, rather than to the tract as a whole, thus extending to each parcel owner the option of retaining ownership and developing in accordance with the urban redevelopment plan. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247 (1980) (see O.C.G.A. § 36-61-9).

Subsection (c) of this section distinguishes between procedures to be followed in acquiring property for public use and in acquiring property for nonpublic use. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247 (1980) (see O.C.G.A. § 36-61-9).

Planned parking structure was to be devoted to "public use" within the meaning of subsection (c) of O.C.G.A. § 36-61-9 and therefore did not trigger the requirements of that subsection. Allright Auto Parks, Inc. v. City of Atlanta, 257 Ga. 315, 357 S.E.2d 797 (1987).

Cited in Nations v. Downtown Dev. Auth., 255 Ga. 324, 338 S.E.2d 240 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, §§ 23 et seq., 482 et seq.

ALR. — Constitutionality, construction, and application of statutes or governmen-

tal projects for improvement of housing conditions (slum clearance), 130 ALR 1069; 172 ALR 966.

Depreciation in value, from project for which land is condemned, as a factor in fixing compensation, 5 ALR3d 901.

What constitutes "Blighted Area" within urban renewal and redevelopment statutes, 45 ALR3d 1096.

Eminent domain: possibility of overcoming specific obstacles to contemplated use as element in determining existence of necessary public use, 22 ALR4th 840.

36-61-10. Disposal of property in redevelopment area generally; notice and bidding procedures; exchange with veterans' organization; temporary operation of property.

(a) A municipality or county may sell, lease, or otherwise transfer real property in an urban redevelopment area or any interest therein acquired by it and may enter into contracts with respect thereto, for residential, recreational, commercial, industrial, or other uses or for public use; or the municipality or county may retain such property or interest for public use, in accordance with the urban redevelopment plan, subject to such covenants, conditions, and restrictions, including covenants running with the land and including the incorporation by reference therein of the provisions of an urban redevelopment plan or any part thereof, as it may deem to be in the public interest or necessary or desirable to assist in preventing the development or spread of future slums or to otherwise carry out the purposes of this chapter. Such sale, lease, other transfer, or retention and any agreement relating thereto may be made only after the approval of the urban redevelopment plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban redevelopment plan and may be obligated to comply with such other requirements as the municipality or county may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on the real property required by the urban redevelopment plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban redevelopment plan. In determining the fair value of real property for uses in accordance with the urban redevelopment plan, a municipality or county shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality or county retaining the property; and the objectives of such plan for the prevention of the recurrence of slum areas. The municipality or county in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality or county until he has completed the construction of any and all improvements which he

has obligated himself to construct thereon. Real property acquired by a municipality or county which, in accordance with the provisions of the urban redevelopment plan, is to be transferred shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban redevelopment plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions, including the incorporation by reference therein of the provisions of an urban redevelopment plan or any part thereof, shall not prevent the filing of the contract or conveyance in the land records of the county in such manner as to afford actual or constructive notice thereof.

(b)(1) A municipality or county may dispose of real property in an urban redevelopment area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as are provided in this subsection. A municipality or county, by public notice by publication once each week for two consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under this Code section, may invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban redevelopment area or any part thereof. The notice shall identify the area or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in the notice. The municipality or county shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out and may negotiate with any persons for proposals for the purchase, lease, or other transfer of any real property acquired by the municipality or county in the urban redevelopment area. The municipality or county may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this chapter. The municipality or county may execute contracts in accordance with subsection (a) of this Code section and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such contracts.

(2) Notwithstanding the provisions or requirements of this Code section, any municipality or county may exchange real property or land, whether vacant or improved, in any urban redevelopment area for real property or land, whether vacant or improved, owned by any post, barracks, encampment, chapter, subsidiary, or any other division or unit of any veterans' organization chartered by the United States Congress, provided such real property or land was owned by the veterans' organization on March 6, 1962, and, provided, further, that the municipality or county owning such urban redevelopment

area desires to obtain the real property or land owned by the veterans' organization for civic improvements, including, but not limited to, the building of art theaters, stadiums, parks, playgrounds, auditoriums, civic theaters, and performing arts theaters.

(c) A municipality or county may temporarily operate and maintain real property acquired in an urban redevelopment area, pending the disposition of the property for redevelopment, without regard to subsection (a) of this Code section, for such uses and purposes as may be deemed desirable, even if such uses and purposes are not in conformity with the urban redevelopment plan. (Ga. L. 1955, p. 354, § 9; Ga. L. 1962, p. 702, § 1.)

JUDICIAL DECISIONS

Factors other than price are to be considered in evaluating bids. Bidders to property under the classification of urban redevelopment projects must be charged with knowledge and held to be on notice of such additional criteria. Dyson v. Dixon, 219 Ga. 427, 134 S.E.2d 1 (1963).

Housing Authority could sell acquired property to private party. — Georgia's Urban Redevelopment Law, O.C.G.A. § 36-61-1 et seq., authorized a housing authority to exercise eminent domain to acquire and redevelop urban property found to be a "slum area;" the housing authority's disposition of condemned property was authorized, and the housing authority was entitled to summary judgment on a former owner's claim that property had been acquired and then sold to a private party. Talley v. Housing Auth., 279 Ga. App. 94, 630 S.E.2d 550 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Repair or disposal of dwellings outside redevelopment area. — Municipality may acquire, rehabilitate, and dispose of substandard residential dwellings to the housing authority when such dwellings are outside an officially declared urban redevelopment area, if such activities are designed to provide low-rent housing to persons displaced by activities within such area. 1982 Op. Att'y Gen. No. U82-28.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 62 et seq. 63 C.J.S., Municipal Corporations, § 873 et seq.

ALR. — Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 ALR 1052.

Application of *Kelo v. City of New London,* 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005), to "Public Use" restrictions in federal and state constitutions takings clauses and eminent domain statutes, 21 ALR6th 261.

36-61-11. Repair, closing, and demolition of dwellings unfit for human habitation.

Any municipality or county may, by ordinance, require the repair, closing, or demolition of dwellings or other structures intended for human habitation which are, as defined in the ordinance, unfit for

human habitation or which may imperil the health, safety, or morals of the occupants thereof or of surrounding areas. Such ordinances may include the following:

(1) Definition of the construction, condition, facilities, ventilation, and other conditions which shall render such structures unfit for human habitation or a nuisance;

(2) Designation of a public official or officials with authority to enforce such ordinances and establishment of procedures therefor;

(3) Provision for the enforcement of such ordinances by the municipal court of the municipality, as defined in Code Section 41-2-5, which may include provision for the abatement thereof as nuisances, as provided in such Code section; and

(4) Provision for the posting of notices on dwellings and other structures intended for human habitation, indicating the actions taken by enforcement officials or the court with respect thereto, and the fixing of penalties for the defacing, destruction, or removal of such notices; provided, however, that no such notice shall be posted on any property then designated by proper governmental authority for acquisition by eminent domain. (Ga. L. 1955, p. 354, § 18; Ga. L. 1960, p. 1052, § 1; Ga. L. 1987, p. 3, § 36.)

Cross references. — Eminent domain, T. 22. Condemnation procedure, T. 22, C. 2.

Law reviews. — For article surveying developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

JUDICIAL DECISIONS

Ordinance unconstitutional if effect is to take property by denying right to rebuild. — When the effect of an ordinance passed pursuant to this section and the application thereof is to take from a property owner the owner's property, not through eminent domain, but by denying the owner a right to rebuild under a zoning code and requiring the owner to demolish under a slum clearance code, the ordinance is unconstitutional, null, and void. Shaffer v. City of Atlanta, 223 Ga. 249, 154 S.E.2d 241 (1967) (see O.C.G.A. § 36-61-11).

Any ordinance which authorizes demolition of a structure within the city without compensation to the owner merely because the cost of repair exceeds the value of the structure or any percentage thereof, without first allowing opportunity to repair (and, if necessary, providing for discovery of the criteria which must be met to bring the structure up to a minimum standard) is unconstitutional and void. Horne v. City of Cordele, 140 Ga. App. 127, 230 S.E.2d 333 (1976).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 56, 57.

ALR. — What constitutes "Blighted Area" within urban renewal and redevelopment statutes, 45 ALR3d 1096.

36-61-12. Issuance of bonds; payment; tax exemption; form; terms; sale; signatures; negotiability; effect of recitation on bonds.

(a) A municipality or county shall have power to issue bonds, in its discretion, from time to time, to finance the undertaking of any urban redevelopment project under this chapter, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban redevelopment projects and shall also have power to issue refunding bonds for the payment of retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality or county derived from or held in connection with its undertaking and carrying out of urban redevelopment projects under this chapter; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban redevelopment projects of the municipality or county under this chapter, and by a mortgage of any such urban redevelopment projects or any part thereof, title to which is in the municipality or county.

(b) Bonds issued under this Code section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this Code section shall be authorized by resolution or ordinance of the local governing body. They may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by the resolution of the local governing body or by the trust indenture or mortgage issued pursuant thereto.

(d) Such bonds may be sold at not less than par at public sales held after notice published prior to such sales in a newspaper having a general circulation in the area of operation and in such other medium

of publication as the municipality or county may determine or may be exchanged for other bonds on the basis of par. Such bonds may be sold to the federal government or to an institution insured by an agency of the federal government at private sale at not less than par and, in the event that less than all of the authorized principal amount of such bonds is sold to the federal government or to an institution insured by an agency of the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality or county, such cost not to exceed the interest cost to the municipality or county of the portion of the bonds sold to the federal government or to an institution insured by an agency of the federal government.

(e) If any of the public officials of the municipality or county whose signatures appear on any bonds or coupons issued under this chapter cease to be such officials before the delivery of the bonds, such signatures, nevertheless, shall be valid and sufficient for all purposes, the same as if the officials had remained in office until the delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality or county in connection with an urban redevelopment project, as defined in paragraph (22) of Code Section 36-61-2, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with this chapter.

(g) Any urban redevelopment agency or housing authority which a municipality or county has elected to exercise powers under Code Section 36-61-17 may also issue bonds, as provided in this Code section, in the same manner as a municipality or county, except that such bonds shall be authorized and the terms and conditions thereof shall be prescribed by the commissioners of such urban redevelopment agency or housing authority in lieu of the local governing body. (Ga. L. 1955, p. 354, § 10; Ga. L. 1970, p. 115, § 1; Ga. L. 1980, p. 1352, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1993, p. 91, § 36.)

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 31.

C.J.S. — 39A C.J.S., Health and Environment, § 62 et seq. 64A C.J.S., Municipal Corporations, § 2118 et seq.

ALR. — Assignment and transfer of government bonds, 22 ALR 775.

Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 ALR 1109.

36-61-13. Bonds declared legal investments.

All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality or county pursuant to this chapter or by any urban redevelopment agency or housing authority vested with urban redevelopment project powers under Code Section 36-61-17, provided that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government, in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of the bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on the bonds or other obligations) will suffice to pay the principal of the bonds or other obligations with interest to maturity thereon, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal of and the interest on the bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this Code section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this Code section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. (Ga. L. 1955, p. 354, § 11.)

36-61-14. Exemption of property from execution, levy, and sale; tax exemption.

(a) All property of a municipality or county, including funds owned or held by it for the purposes of this chapter, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall judgment against a municipality or county be a charge or lien upon such property; provided, however, that this Code section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given

pursuant to this chapter by a municipality or county on its rents, fees, grants, or revenues from urban redevelopment projects.

(b) The property of a municipality or county, acquired or held for the purpose of this chapter, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof. Such tax exemption shall terminate when the municipality or county sells, leases, or otherwise disposes of property in an urban redevelopment area to a purchaser or lessee who or which is not a public body. (Ga. L. 1955, p. 354, § 12.)

36-61-15. Presumption as to title of purchaser of property from municipality or county.

Any instrument executed by a municipality or county and purporting to convey any right, title, or interest in any property under this chapter shall be conclusively presumed to have been executed in compliance with this chapter insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned. (Ga. L. 1955, p. 354, § 14.)

RESEARCH REFERENCES

ALR. — Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 ALR 1052.

36-61-16. Assistance by public bodies generally; powers of public bodies; powers of municipalities and counties.

(a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project located within the area in which it is authorized to act, any public body, upon such terms, with or without consideration, as it may determine, may:

(1) Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality or county;

(2) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this Code section;

(3) Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban redevelopment plan;

(4) Lend, grant, or contribute funds to a municipality or county;

(5) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a

municipality or county or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban redevelopment project; and

(6) Cause public buildings and public facilities, including parks, playgrounds, recreational, community, education, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan, replan, zone, or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the municipality or county.

If at any time title to or possession of any urban redevelopment project is held by any public body or governmental agency, other than the municipality or county, which is authorized by law to engage in the undertaking, carrying out, or administration of urban redevelopment projects, including any agency or instrumentality of the United States of America, the provisions of the agreements referred to in this subsection shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the terms "municipality" and "county" shall also include an urban redevelopment agency or a housing authority vested with all of the urban redevelopment project powers pursuant to Code Section 36-61-17.

(b) Any sale, conveyance, lease, or agreement provided for in this Code section may be made by a public body without appraisal, public notice, advertisement, or public bidding.

(c) For the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project of an urban redevelopment agency or a housing authority under this chapter, a municipality or county may, in addition to their other powers and upon such terms, with or without consideration, as they may determine, do and perform any or all of the actions or things which, by subsection (a) of this Code section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

(d) For the purposes of this Code section or for the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project of a municipality or county, such municipality or county may, in addition to any authority to issue bonds pursuant to Code Section 36-61-12, issue and sell its general obligation bonds. Any bonds issued by a municipality or county pursuant to this Code section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such

municipality and county for public purposes generally. (Ga. L. 1955, p. 354, § 13; Ga. L. 1982, p. 3, § 36.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 485 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 62 et seq. 63 C.J.S., Municipal Corporations, § 1142 et seq.

36-61-17. Exercise of redevelopment powers by municipalities and counties; delegation to redevelopment agency or housing authority.

(a) A municipality or county may itself exercise its "urban redevelopment project powers," as defined in subsection (b) of this Code section, or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban redevelopment agency created by Code Section 36-61-18 or by a housing authority, if one exists or is subsequently established in the community, or by an existing or subsequently established downtown development authority. In the event that the local governing body makes such determination, the urban redevelopment agency or the housing authority or downtown development authority, as the case may be, shall be vested with all of the "urban redevelopment project powers" of the municipality or county conferred in this chapter, in the same manner as though all such powers were conferred on the agency or authority instead of the municipality or county; and any public body may cooperate with the urban redevelopment agency or housing authority or the downtown development authority to the same extent that it could cooperate with the municipality or county itself if the municipality or county were exercising its urban redevelopment project powers. If the local governing body does not elect to make such determination, the municipality or county in its discretion may exercise its urban redevelopment project powers through a board or commissioner or through such officers of the municipality or county as the local governing body may by resolution determine.

(b) As used in this Code section, the term "urban redevelopment project powers" shall include all of the rights, powers, functions, duties, privileges, immunities, and exemptions granted to a municipality or county under this chapter, except the following:

(1) The power to determine an area to be a slum area and to designate such area as appropriate for an urban redevelopment project;

(2) The power to approve and amend urban redevelopment plans;

(3) The power to establish a general plan for the locality as a whole;

(4) The power to formulate a workable program under Code Section 36-61-6;

(5) The powers, duties, and functions referred to in Code Section 36-61-11;

(6) The power to make the determinations and findings provided for in Code Section 36-61-4, Code Section 36-61-5, and subsection (d) of Code Section 36-61-7;

(7) The power to issue general obligation bonds; and

(8) The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in paragraph (8) of Code Section 36-61-8. (Ga. L. 1955, p. 354, § 16; Ga. L. 1982, p. 3, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 2533, § 15.)

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 1 et seq., 16.

36-61-18. Creation of agency; appointment of board of commissioners; compensation, term, and certificate; annual report; removal of commissioners.

(a) There is created in each municipality and in each county a public body corporate and politic to be known as the "urban redevelopment agency" of the municipality or county. Such agency shall not transact any business or exercise its powers under this Code section until or unless the local governing body has made the finding prescribed in Code Section 36-61-5 and has elected to have the urban redevelopment project powers exercised by an urban redevelopment agency as provided in Code Section 36-61-17.

(b) If the urban redevelopment agency is authorized to transact business and exercise powers under this Code section, the mayor, by and with the advice and consent of the local governing body, or the board of commissioners or other governing body of the county shall appoint a board of commissioners of the urban redevelopment agency, which shall consist of such number of commissioners, with such terms of office, as shall be determined by the local governing body. If the governing body of a municipality designates members of a downtown development authority as an urban redevelopment agency, the method of appointment, number of commissioners, and terms of office shall be in conformity with the requirements of Code Section 36-42-4.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling ex-

penses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality or county and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

(d) The powers of an urban redevelopment agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws require a larger number. Any person may be appointed as commissioner if he resides within the area of operation of the agency, which shall be coterminous with the area of operation of the municipality or county, and is otherwise eligible for such appointments under this chapter.

(e) The mayor or the board of commissioners or other governing body of the county shall designate a chairman and vice-chairman from among the commissioners. An agency may employ an executive director, technical experts, and such other agents and employees, permanent and temporary, as it may require and may determine their qualifications, duties, and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality or county and that the report is available for inspection during business hours in the office of the city or county clerk and in the office of the agency.

(f) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed, but only after a hearing. He shall be given a copy of the charges at least ten days prior to such hearing and shall have an opportunity to be heard in person or by counsel. (Ga. L. 1955, p. 354, § 16; Ga. L. 1992, p. 2533, § 16.)

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 10 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 447, 448, 455, 531 et seq.

36-61-19. Interest by public official or employee or employee of redevelopment agency in redevelopment project or property; disclosure; eligibility of commissioners and officers of housing authorities for other office.

(a) No public official or employee of a municipality or county or of a board or commission thereof and no commissioner or employee of a housing authority or urban redevelopment agency which has been vested by a municipality or county with urban redevelopment project powers under Code Section 36-61-17 shall voluntarily acquire any interest, direct or indirect, in any urban redevelopment project of such municipality or county or in any property included or planned to be included in any such urban redevelopment project or in any contract or proposed contract in connection with such urban redevelopment project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner, or employee presently owns or controls, or owned or controlled within the preceding two years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban redevelopment project, he shall immediately disclose this in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body; any such official, commissioner, or employee shall not participate in any action by the municipality or county or a board or commission thereof, the housing authority, or the urban redevelopment agency affecting such property. Any disclosure required to be made by this Code section to the local governing body shall concurrently be made to a housing authority or urban redevelopment agency which has been vested with urban redevelopment project powers by the municipality or county pursuant to Code Section 36-61-17.

(b) Directors of a downtown development authority designated as an urban redevelopment agency pursuant to this chapter and other public officers of the municipality or county may serve as commissioners of the urban redevelopment agency, provided that such persons comply with the provisions of subsection (a) of this Code section.

(c) Any violation of this Code section shall constitute misconduct in office. (Ga. L. 1955, p. 354, § 17; Ga. L. 1992, p. 2533, § 17; Ga. L. 2010, p. 834, § 1/SB 456.)

The 2010 amendment, effective July 1, 2010, rewrote subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 248 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 239, 240, 247 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 429, 430, 433, 434.

CHAPTER 62

DEVELOPMENT AUTHORITIES

Sec.
36-62-1. Short title.
36-62-2. Definitions.
36-62-3. Constitutional authority for chapter; finding of public purposes; tax exemption.
36-62-4. Development authorities created; appointment and terms of directors; quorum; adoption and filing of resolution of need.
36-62-5. Directors; officers; compensation; adoption of bylaws; delegation of powers and duties; conflicts of interest; audits.
36-62-5.1. Joint authorities.
36-62-6. Powers of authority generally.
36-62-6.1. Obtaining real property within adjoining county which will be exchanged for federal property.
36-62-7. Operation of project by governmental units prohibited; sale or lease of property for operation.
36-62-8. Obligations of authority; use of proceeds; status as revenue obligations; subsequent series of bonds or notes; bond anticipation notes; interest rates; issuance and validation.
36-62-9. Purposes of chapter; issuance of bonds or bond anticipation notes; exceptions.
36-62-10. Obligations of authority not indebtedness of state or political subdivisions.
36-62-11. Construction of chapter generally; effect of conflict between chapter and other provisions of law; applicability of certain other provisions of law to proceedings under chapter.
36-62-12. Previously created authority not affected by chapter.
36-62-13. Disposition of property of certain authorities dissolved by operation of law.
36-62-14. Perpetual existence of authority; dissolution.

Cross references. — Housing authorities of counties and municipalities, T. 8, C. 3. Downtown development authorities, T. 36, C. 42.

Law reviews. — For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

For note, "Procedural requirements for public approval of tax-exempt industrial development bonds under TEFRA", see 19 Ga. St. B.J. 84 (1982).

JUDICIAL DECISIONS

Similarity to Downtown Development Authorities Law. — Although the Downtown Development Authorities Law expands the scope of permissible authority projects beyond that of the Development Authorities Law to include all types of commercial projects, the Downtown Development Authorities Law otherwise resembles the Development Authorities Law in design and purpose. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110 (1983).

OPINIONS OF THE ATTORNEY GENERAL

For multifaceted discussion of the operation of this chapter, see 1980 Op. Att'y Gen. No. 80-158.

Development authority may not disburse funds to a chamber of commerce for general promotion and other described activities without violating Ga. Const. 1976, Art. III, Sec. VIII, Para. XII (see Ga. Const. 1983, Art. III, Sec. VI, Para. VI). 1983 Op. Att'y Gen. No. U83-7.

City development authority could transfer assets, including cash and contract rights, to a joint city-county development authority in return for services. 1996 Op. Att'y Gen. No. U96-24.

RESEARCH REFERENCES

ALR. — Adverse impact upon existing business as factor affecting validity and substantive requisites of issuance, by state or local governmental agencies, of economic development bonds in support of private business enterprise, 39 ALR4th 1096.

Eminent domain: industrial park or similar development as public use justifying condemnation of private property, 62 ALR4th 1183.

36-62-1. Short title.

This chapter may be referred to as the "Development Authorities Law." (Ga. L. 1963, p. 531, § 1; Ga. L. 1969, p. 137, § 1.)

Law reviews. — For article discussing industrial development bond financing under Georgia development authority law, see 14 Ga. St. B.J. 10 (1977). For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

JUDICIAL DECISIONS

Cited in Hay v. Newton County, 246 Ga. App. 44, 538 S.E.2d 181 (2000).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 1 et seq. 64 C.J.S., Municipal Corporations, §§ 1279, 1280.

36-62-2. Definitions.

As used in this chapter, the term:

(1) "Authority" means each public corporation created pursuant to this chapter.

(2) "Cost of project" includes:

(A) All costs of construction, purchase, or other form of acquisition;

(B) All costs of real or personal property required for the purposes of such project and of all facilities related thereto, including land and any rights or undivided interest therein, easements, franchises, water rights, fees, permits, approvals, licenses, and certificates and the securing of such franchises, permits, approvals, licenses, and certificates and the preparation of applications therefor;

(C) All machinery, equipment, initial fuel, and other supplies required for such project;

(D) Financing charges and interest prior to and during construction and during such additional period as the authority may reasonably determine to be necessary for the placing of such project in operation;

(E) Costs of engineering, architectural, and legal services;

(F) Fees paid to fiscal agents for financial and other advice or supervision;

(G) Cost of plans and specifications and all expenses necessary or incidental to the construction, purchase, or acquisition of the completed project or to determining the feasibility or practicability of the project; and

(H) Administrative expenses and such other expenses as may be necessary or incidental to the financing authorized in this chapter.

There may also be included, as part of such cost of project, the repayment of any loans made for the advance payment of any part of such cost, including the interest thereon. The cost of any project may also include a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority with respect to the financing and operation of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds or notes issued under this chapter.

(3) "County" means any county of this state.

(4) "Governing body" means the elected or duly appointed officials constituting the governing body of each municipal corporation and county in the state.

(5) "Municipal corporation" means each city and town in the state.

(6) "Project" includes:

(A) Any one or more buildings or structures to be used in the production, manufacturing, processing, assembling, storing, or handling of any agricultural, manufactured, mining, or industrial product or any combination of the foregoing, in every case with all necessary or useful furnishings, machinery, equipment, parking facilities, landscaping, and facilities for outdoor storage, all as determined by the authority, which determination shall be final and not subject to review; and there may be included as part of any such project all improvements necessary to the full utilization thereof, including site preparation, roads and streets, sidewalks, water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive, and air transportation, transportation facilities incidental to the project, and the dredging and improving of harbors and waterways, none of which foregoing descriptive words shall be construed to constitute a limitation, provided that none of the improvements described in this sentence shall be the primary purpose of any project;

(B) The acquisition, construction, leasing, or equipping of new industrial facilities or the improvement, modification, acquisition, expansion, modernization, leasing, equipping, or remodeling of existing industrial facilities located or to be located within the area of operation of the authority;

(C) The acquisition, construction, improvement, or modification of any property, real or personal, which any industrial concern might desire to use, acquire, or lease in connection with the operation of any plant or facility located or to be located within the area of operation of the authority;

(D) The acquisition, construction, improvement, or modification of any property, real or personal, used as air or water pollution control facilities which any federal, state, or local agency having jurisdiction in the premises shall have certified as necessary for the continued operation of the industry or industries which the same is to serve and which is necessary for the public welfare, provided that for the purposes of this subparagraph, the term "air pollution control facility" means any property used, in whole or in substantial part, to abate or control atmospheric pollution or contamination by removing, altering, disposing of, or storing atmospheric pollutants or contaminants, if such facility is in furtherance of applicable federal, state, or local standards for abatement or control of atmospheric pollutants or contaminants; and provided, further, that for the purpose of this subparagraph, the term "water pollution control facility" means any property used, in whole or in

substantial part, to abate or control water pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, holding ponds, lagoons, and appurtenances thereto, if such facility is in the furtherance of applicable federal, state, or local standards for the abatement or control of water pollution or contamination;

(E) The acquisition, construction, improvement, or modification of any property, real or personal, used as or in connection with a sewage disposal facility or a solid waste disposal facility which any federal, state, or local agency having jurisdiction in the premises shall have certified as necessary for the continued operation of the industries which the same is to serve and which is necessary for the public welfare, provided that if such facility is to be operated by, or is to serve related facilities of, a political subdivision or municipal corporation of this state or an agency, authority, or instrumentality thereof, for its general constituency, the certification need only state that such facility is necessary for the public welfare; provided, further, that for the purposes of this subparagraph, the term "sewage disposal facility" means any property used for the collection, storage, treatment, utilization, processing, or final disposal of sewage; for the purposes of this subparagraph, the term "solid waste disposal facility" means any property used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste; for the purposes of this subparagraph, the term "solid waste" means garbage, refuse, or other discarded solid materials, including solid waste materials resulting from industrial and agricultural operations and from community activities but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as salt, dissolved or suspended solids in industrial waste-water effluents, and dissolved materials in irrigation return flows; and for the purposes of this subparagraph, the word "garbage" includes putrescible wastes, including animal and vegetable matters, animal offal and carcasses, and recognizable industrial by-products but excludes sewage and human wastes; and the word "refuse" includes all nonputrescible wastes;

(F) The acquisition, construction, improvement, or modification of any property, real or personal or both, used as a peak shave facility, provided that "peak shave facility" shall have the meaning generally accepted and understood in the natural gas distribution industry as that term is generally understood to describe a storage facility for the purpose of avoiding undesirable consequences in the distribution system during peak periods of consumption; and any project involving a "peak shave facility" may be undertaken as otherwise provided in this chapter;

(G) The acquisition, construction, leasing, improvement, or modification of any facilities and any property, real or personal or both, useful or necessary in the transportation of persons or property by air, provided that such projects shall not include the creation of airports or airport terminal facilities or improvements thereon, except as incidentally related to the furnishing of transportation of persons or property by air as provided in this subparagraph; such projects may include, but shall not be limited to, aircraft, aircraft maintenance and reconditioning equipment, aircraft communications equipment and facilities for the maintenance and repair of such equipment, ground support equipment and facilities used by aircraft, any necessary or useful real or personal property or rights to such property, all licenses, storage facilities including storage and distribution facilities for fuel, and the acquisition, modernization, or expansion of existing facilities or systems for transportation of persons or property by air, all as determined by the authority, which determination shall be final and not subject to review; such projects for the transportation of persons or property by air are authorized to assist state and local governments to secure adequate systems of transportation of passengers for hire as authorized by law and for the development of trade, commerce, industry, and employment opportunities; and such projects for the transportation of persons or property by air may be undertaken to the same extent and on the same conditions as otherwise provided in this chapter for other facilities, except that such projects may be authorized only for air transportation systems which are not eligible to receive subsidies from the federal government at the time the project is undertaken, only where the corporate headquarters, the general maintenance, repair, support, and communication facilities, the general reservations, scheduling, and dispatch facilities, and the personal residence of the majority of the employees are all located within the geographic jurisdiction of the authority, and only if the aircraft are routinely dispatched from and returned to the geographic jurisdiction of the authority, provided that the operation of flight equipment and incidental ground support facilities and equipment and the location of employees of such a project outside of the geographic jurisdiction of the authority shall not be prohibited if the conditions specified in this subparagraph are met; and provided, further, that no city, county, political subdivision, or any development authority may ever operate any such facility and the same must be acquired and operated by a private company or individual who shall guarantee the repayment of any obligations assumed, who shall be fully responsible for all operating expenses and losses, and who shall be taxable as any other private undertaking would be;

(H) The acquisition, construction, improvement, or modification of any property, real or personal, which shall be suitable for or used as or in connection with:

(i) Sports facilities, including private training and related office and other facilities when authorized by the governing authority of the political subdivision or municipal corporation in which the facility is to be constructed and maintained if such sports facilities promote trade, commerce, industry, and employment opportunities by hosting regional, state-wide, or national events;

(ii) Convention or trade show facilities;

(iii) Airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing;

(iv) Facilities for the local furnishing of electric energy or gas;

(v) Facilities for the furnishing of water, if available, on reasonable demand to members of the general public;

(vi) Hotel and motel facilities for lodging which also may provide meals, provided that such facilities are constructed in connection with and adjacent to convention, sports, or trade show facilities. No project as defined by this division shall be exempt from any ad valorem taxation; and

(vii) Amphitheaters with seating capacity exceeding 1,000 patrons and any facilities directly related to the operation of such amphitheaters, if such amphitheaters promote trade, commerce, industry, and employment opportunities by hosting regional, state-wide, or national events;

(I) The acquisition or development of land as the site for an industrial park, provided that for purposes of this subparagraph, the term "development of land" includes the provision of water, sewage, drainage, or similar facilities or transportation, power, or communication facilities which are incidental to use of the site as an industrial park but, except with respect to such facilities, does not include the provision of structures or buildings;

(J) The acquisition, construction, leasing, or financing of:

(i) An office building facility and related real and personal property for use by any business enterprise or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state and which shall be adjacent to or used in conjunction with any other existing or proposed project defined in

this paragraph, which existing or proposed project is located within the area of operation of the authority and which is used or intended to be used by such business enterprise or charitable corporation, association, or similar entity; or

(ii) A separate office building facility and related real and personal property for use by any business enterprise or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state.

No such office building facility as defined in this subparagraph shall be undertaken by an authority unless the authority determines that the business enterprise or charitable corporation, association, or similar entity to use such facility will be the primary tenant;

(K) Any one or more buildings or structures used or to be used as a skilled nursing home or intermediate care home subject to regulation and licensure by the Department of Community Health and all necessary, convenient, or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities;

(K.1) The provision of financing to property owners for the purpose of installing or modifying improvements to their property in order to reduce the energy or water consumption on such property or to install an improvement to such property that produces energy from renewable resources;

(L) The acquisition, construction, design, engineering, improvement, leasing, maintenance, modification, rebuilding, and repair of any facilities and any property utilized in connection with a community antenna television system or any combination of the foregoing, including all necessary or useful land or rights in land and all necessary or useful furnishings, machinery, vehicles, equipment, and parking facilities, all as determined by the authority, which determination shall be final and not subject to review; such projects are authorized to promote the expansion and development of the cable communication industry, to enhance employment opportunities throughout this state, and to encourage local origination programming by community antenna television systems on one or more channels, to include, but not be limited to, public access, government, and education programs; and the installation of such community antenna television systems shall not occur in areas adequately served by private enterprise;

(M) The acquisition, construction, equipping, improvement, modification, or expansion of any property, real or personal, for use

as or in connection with research and development facilities. As used in this subparagraph, the term "research and development facilities" means any property used in whole or in substantial part in conducting basic and applied research for commercial, industrial, or governmental institutions in connection with institutions of higher education, which research is determined by the authority to contribute to the development and promotion of trade, commerce, industry, and employment opportunities for the public good and general welfare in furtherance of the purposes for which the authority was created. The authority's determination as to such matters shall be final and not subject to review; and

(N) The acquisition, construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of the development of trade, commerce, industry, and employment opportunities. A project may be for any industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determines, by a duly adopted resolution, that the project and such use thereof would further the public purpose of this chapter. (Ga. L. 1963, p. 531, § 2; Ga. L. 1969, p. 137, § 1; Ga. L. 1971, p. 177, § 1; Ga. L. 1975, p. 1259, § 1; Ga. L. 1976, p. 708, §§ 1, 2; Ga. L. 1976, p. 1483, § 1; Ga. L. 1977, p. 789, § 1; Ga. L. 1978, p. 1162, §§ 1, 2; Ga. L. 1979, p. 413, § 1; Ga. L. 1980, p. 1332, § 1; Ga. L. 1981, p. 1457, §§ 1, 2; Ga. L. 1982, p. 3, § 36; Ga. L. 1982, p. 1706, §§ 1, 6; Ga. L. 1984, p. 22, § 36; Ga. L. 1988, p. 685, § 1; Ga. L. 1992, p. 2533, § 18; Ga. L. 1996, p. 1105, § 1; Ga. L. 2003, p. 390, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 261, § 2/HB 1388.)

The 2010 amendment, effective July 1, 2010, added subparagraph (6)(K.1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a comma was inserted following "power" in subparagraph (6)(D).

Editor's notes. — Ga. L. 1978, p. 1162, § 3, which Act deleted language at the end of paragraph (6) and added subparagraphs (H) and (I) to paragraph (6), provides that if any provision of § 1 or § 2 of the Act is held to be invalid or inoperative, the remaining provisions of the Act shall be deemed to be void and of no effect.

Ga. L. 1979, p. 413, § 3, which Act added subparagraph (J) of paragraph (6) provides that if any provision of § 1 or § 2 of the Act is held to be invalid or inoperative, the remaining provisions of the Act shall be deemed to be void and of no effect.

Ga. L. 1980, p. 1322, § 3, which Act added subparagraph (K) of paragraph (6), provides that if any part of the Act is declared unconstitutional, such adjudication shall affect the other parts of the Act, which shall thereafter be of no force and effect.

Law reviews. — For annual survey

article on local government law, see 52 Mercer L. Rev. 341 (2000).

JUDICIAL DECISIONS

Constitutionality of subparagraph (6)(K). — Subparagraph (6)(K) of O.C.G.A. § 36-62-2 is not contrary on the statute's face to Ga. Const. 1976, Art. IX, Sec. VIII, Para. II (see Ga. Const. 1983, Art. IX, Sec. VI, Paras. III and IV). Development Auth. v. Beverly Enters., 247 Ga. 64, 274 S.E.2d 324 (1981).

Definition of "project" was not intended to encompass retail grocery stores, just as it was not intended to encompass gasoline filling stations or retail hardware, clothing or drug stores, restaurants or fast food outlets, or similar endeavors. Day v. Development Auth., 248 Ga. 488, 284 S.E.2d 275 (1981).

Golf course proposed to be constructed by a development authority violated both the Ga. Const. 1983, Art. IX, Sec. VI, Para. III and the Development Authority Law (O.C.G.A. § 36-62-1 et seq.) because it is neither a sports facility nor for the public purpose of developing trade, commerce, and industry. Haney v. Development Auth., 271 Ga. 403, 519 S.E.2d 665 (1999).

"Convention facility" is a means used to facilitate assembly of members of a particular group; when the evidence supports a finding that the purpose of a project for a motel with a meeting room is to attract groups of up to 150 persons meeting for a particular purpose, by offering lodging and a meeting room which will accommodate the group, the project is a "convention facility" within the meaning of subparagraphs (6)(H)(ii) and (vi) of O.C.G.A. § 36-62-2, and therefore is a permissible project under the Development Authority Law. Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62 (1987).

Cited in Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Planning commissioner is public officer. — Member of municipal or county planning commission is a "public officer." 1969 Op. Att'y Gen. No. 69-488.

RESEARCH REFERENCES

C.J.S. — 64 C.J.S., Municipal Corporations, § 1602 et seq.

ALR. — Abstention from voting of member of municipal council present at session as affecting requisite voting majority, 63 ALR3d 1072.

36-62-3. Constitutional authority for chapter; finding of public purposes; tax exemption.

This chapter is passed pursuant to authority granted the General Assembly by Article IX, Section VI, Paragraph III of the Constitution of this state. Each authority created by this chapter is created for nonprofit and public purposes, and it is found, determined, and declared that the creation of each such authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter. For such

reasons, the state covenants, from time to time, with the holders of the bonds issued under this chapter that such authority shall be required to pay no taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others (other than property leased for the purposes of a "project" as defined in subparagraph (J) or (K) of paragraph (6) of Code Section 36-62-2, which shall be taxable by the state and its counties, municipal corporations, political subdivisions, and taxing districts) or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that the bonds of such authority, their transfer, and the income therefrom shall at all times be exempt from taxation within this state. The tax exemption provided in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority. (Ga. L. 1963, p. 531, § 13; Ga. L. 1969, p. 137, § 10; Ga. L. 1979, p. 413, § 2; Ga. L. 1980, p. 1332, § 2; Ga. L. 1983, p. 3, § 57; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 6, § 36.)

Cross references. — Prepayment of ad valorem or school taxes by developers of major industrial projects, § 48-5-31.

Editor's notes. — Ga. L. 1979, p. 413, § 3, which Act amended this section, provides that if any provision of § 1 or § 2 of the Act is held to be invalid or inoperative, the remaining provisions of the Act shall be deemed to be void and of no effect.

Ga. L. 1980, p. 1332, § 3, which Act amended this section, provides that if any part of the Act is declared or adjudged invalid or unconstitutional, such adjudication shall affect the other parts of the Act, which shall thereafter be of no force and effect.

Law reviews. — For article, "Tax-Exempt Financing of Section 8 Housing Projects," see 15 Ga. St. B.J. 68 (1978). For article discussing the role of Georgia development authorities in tax-exempt financing of private business, see 16 Ga. St. B.J. 8 (1979). For article discussing tax-exempt financing in Georgia, see 18 Ga. St. B.J. 20 (1981).

JUDICIAL DECISIONS

Business taking leasehold from authority subject to taxation. — While the authority is exempt under O.C.G.A. § 36-62-3, a business which takes a leasehold from the authority is subject to ad valorem taxation on the fair market value of the possessory interest held. DeKalb County Bd. of Tax Assessors v. W.C. Harris & Co., 248 Ga. 277, 282 S.E.2d 880 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Property held by other entity subject to taxation. — While a development authority is not required to pay any ad valorem taxes on any estate the authority holds, an estate in property held by another entity is not exempt from ad valorem taxation. 1974 Op. Att'y Gen. No. U74-5.

RESEARCH REFERENCES

C.J.S. — 64 C.J.S., Municipal Corporations, §§ 1279, 1280. 64A C.J.S., Municipal Corporations, § 2267 et seq.

ALR. — Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 ALR 510.

Tax exemptions and the contract clause, 173 ALR 15.

36-62-4. Development authorities created; appointment and terms of directors; quorum; adoption and filing of resolution of need.

(a) There is created in and for each county and municipal corporation in the state a public body corporate and politic to be known as the "development authority" of such county or municipal corporation, which shall consist of a board of not less than seven and not more than nine directors to be appointed by resolution of the governing body of the county or municipal corporation. At the expiration of the current terms of office of the first four members of the board of directors, the governing body of the county or municipal corporation shall elect successors to such members to serve for initial terms of two years and shall elect successors to the remaining members of the board for initial terms of four years. Thereafter, the terms of all directors shall be for four years. The terms of any directors added to the original seven directors shall be four years. If, at the end of any term of office of any director, a successor thereto has not been elected, the director whose term of office has expired shall continue to hold office until his successor is so elected.

(b) A majority of the directors shall constitute a quorum, but no action may be taken by the board without the affirmative vote of a majority of the full membership of the board.

(c) No authority shall transact any business or exercise any powers under this chapter until the governing body of the county or municipal corporation, by proper resolution, declares that there is a need for an authority to function in the county or municipal corporation. A copy of the resolution shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under this chapter.

(d) In each county of this state having a population of not less than 41,700 nor more than 42,300 according to the United States decennial census of 1990 or any future such census, the board of directors of an industrial development authority in such county which is created directly by the Constitution of Georgia shall assume all the powers, duties, and responsibilities of and shall become the board of directors of any development authority created under this chapter which is located in such county or in any municipal corporation in such county.

(e) In each county of this state having a population of not less than 24,000 nor more than 26,000 according to the United States decennial

census of 1990 or any future such census, the board of directors of an industrial development authority in such county which is created directly by the Constitution of Georgia may assume all the powers and responsibilities of and may become the board of directors of any development authority created under this chapter which is located in such county or in any municipal corporation in such county. Such joint boards shall have the authority to transfer any and all assets of the development authority created under this chapter to the industrial development authority which is created directly by the Constitution of Georgia; provided, however, that the governing authority of said county or municipal corporation shall approve the assumption of such powers and responsibilities. (Ga. L. 1963, p. 531, § 3; Ga. L. 1969, p. 137, § 2; Ga. L. 1981, p. 542, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 390, § 1; Ga. L. 1992, p. 1157, § 1; Ga. L. 1992, p. 1207, § 1; Ga. L. 1992, p. 1614, § 1.)

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 571.

36-62-5. Directors; officers; compensation; adoption of bylaws; delegation of powers and duties; conflicts of interest; audits.

(a) The directors shall be taxpayers residing in the county or municipal corporation for which the authority is created, and their successors shall be appointed as provided by the resolution provided for in Code Section 36-62-4. The governing authority of a county or municipality may appoint no more than one member of the governing authority as a director.

(b) The directors shall elect one of their members as chairman and another as vice-chairman and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may, but need not, be a director.

(c) The directors shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties; provided, however, the directors of the development authority activated by counties having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census shall be paid a per diem allowance to be determined by the governing authority of such counties for each day, or part thereof, spent in the performance of their duties.

(d) The authority may make bylaws and regulations for its governance and may delegate to one or more of its officers, agents, and

employees such powers and duties as may be deemed necessary and proper.

(e)(1)(A) The provisions of Code Section 45-10-3 shall apply to all directors of the authority, and a director of the authority shall not engage in any transaction with the authority.

(B) The provisions of paragraph (9) of Code Section 45-10-3 and subparagraph (A) of this paragraph shall be deemed to have been complied with and the authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or any organization or person with which any director of the authority is in any way interested or involved, provided (1) that any interest or involvement by such director is disclosed in advance to the directors of the authority and is recorded in the minutes of the authority, (2) that any interest or involvement by such director with a value in excess of $200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30 days in advance of consummating such transaction, (3) that no director having a substantial interest or involvement may be present at that portion of an authority meeting during which discussion of any matter is conducted involving any such organization or person, and (4) that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person. As used in this subsection, a "substantial interest or involvement" means any interest or involvement which reasonably may be expected to result in a direct financial benefit to such director as determined by the authority, which determination shall be final and not subject to review.

(2) Nothing contained in paragraph (1) of this subsection or in Code Section 45-10-3 shall be deemed to prohibit any director who is present at any meeting or who participates in any decision of the authority from providing legal services in connection with any of the undertakings of the authority or from being paid for such services.

(f) Each development authority shall provide to its respective county or municipal fiscal officer, as the case may be, an audited financial statement if such audit has been required by the respective county or municipality within six months of the end of the previous fiscal year. (Ga. L. 1963, p. 531, § 4; Ga. L. 1969, p. 137, § 3; Ga. L. 1980, p. 806, § 1; Ga. L. 1982, p. 1706, §§ 2, 7; Ga. L. 1983, p. 1346, § 4; Ga. L. 1984, p. 22, § 36; Ga. L. 1995, p. 1188, §§ 1, 2; Ga. L. 2000, p. 1336, § 1; Ga. L. 2010, p. 834, § 2/SB 456.)

The 2010 amendment, effective July 1, 2010, in subparagraph (e)(1)(B), in the first sentence, inserted "that any interest or involvement by such director with a value in excess of $200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30 days in advance of consummating such transaction, (3)" and substituted "(4)" for "(3)", and substituted "means" for "shall mean" near the middle of the last sentence.

JUDICIAL DECISIONS

Cited in White v. Board of Comm'rs, 252 Ga. App. 120, 555 S.E.2d 45 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Interest in bank providing loans. — An individual, who is a chairperson and stockholder in a local bank negotiating authority loans, may be a member of a downtown authority and an industrial authority provided that the provisions of O.C.G.A. §§ 36-62A-1 and 36-62-5 are met. 1983 Op. Att'y Gen. No. U83-30.

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 571.

36-62-5.1. Joint authorities.

(a) By proper resolution of the local governing bodies, an authority may be created and activated by:

(1) Any two or more municipal corporations;

(2) Any two or more counties;

(3) One or more municipal corporations and one or more counties; or

(4) Any county in this state and any contiguous county in an adjoining state.

(b) A joint authority so created shall be governed by this chapter in the same manner as other authorities created pursuant to this chapter, except as specifically provided otherwise in this Code section.

(c) The resolutions creating and activating a joint authority shall specify the number of members of the authority, the number to be appointed by each participating county or municipal corporation, their terms of office, and their residency requirements.

(d) The resolutions creating and activating joint authorities may be amended by appropriate concurrent resolutions of the participating governing bodies.

(e)(1) A joint authority created by two or more contiguous counties pursuant to this Code section must be an active, bona fide joint authority; must have a board of directors; must meet at least quarterly; and must develop an operational business plan. A county may belong to more than one such joint authority.

(2) A business enterprise as defined under subsection (a) of Code Section 48-7-40 located within the jurisdiction of a joint authority established by two or more contiguous counties shall qualify for an additional $500.00 tax credit for each new full-time employee position created. The $500.00 job tax credit authorized by this paragraph shall be subject to all the conditions and limitations specified under Code Section 48-7-40, as amended; provided, however, that a business enterprise located in a county that belongs to more than one joint authority shall not qualify for an additional tax credit in excess of $500.00 for each new full-time employee position created.

(f) With respect to a joint authority created on or before March 31, 1995, and notwithstanding any provision of this Code section to the contrary, any taxpayer eligible for a tax credit pursuant to subsection (e) of this Code section shall have the option of electing to utilize for a given project the tax credit formerly authorized under this Code section for taxable years beginning prior to January 1, 1995, in lieu of the tax credit otherwise available pursuant to this Code section for taxable years beginning on or after January 1, 1995. Such election shall be made for each committed project in writing on or before July 1, 1995, to the commissioner of community affairs. Such election shall not be effective unless approved in writing by the commissioner of community affairs. The Board of Community Affairs shall promulgate regulations necessary for the implementation of this subsection. (Ga. L. 1981, p. 1419, § 1; Ga. L. 1994, p. 928, § 7; Ga. L. 1995, p. 585, § 9; Ga. L. 2003, p. 390, § 2; Ga. L. 2004, p. 921, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, in subsection (f), "commissioner of community affairs" was substituted for "Commissioner of community affairs" in the second sentence and "Board of Community Affairs" was substituted for "board of community affairs" in the fourth sentence.

Pursuant to Code Section 28-9-5, in 2004, in paragraph (e)(2), "located" was substituted for "locating" in the second sentence.

Editor's notes. — Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provided that this Act was applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provided that this Act was applicable to all taxable years beginning on or after January 1, 1995.

Administrative rules and regulations. — Job Tax Credit Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-9.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of

Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

For note on the 1994 amendment of this Code section, see 11 Ga. St. U. L. Rev. 249 (1994).

36-62-6. Powers of authority generally.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To make and execute contracts and other instruments necessary to exercise the powers of the authority, any of which contracts may be made with the county in which the authority is located or with any one or more municipal corporations in such county; each such county and all municipal corporations therein are authorized to enter into contracts with the authority;

(4) To receive and administer gifts, grants, and devises of any property and to administer trusts;

(5) To acquire, by purchase, gift, or construction, any real or personal property desired to be acquired as part of any project or for the purpose of improving, extending, adding to, reconstructing, renovating, or remodeling any project or part thereof already acquired or for the purpose of demolition to make room for such project or any part thereof;

(6) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, or grant options for any real or personal property or interest therein for any such purposes;

(7) Except as otherwise provided in paragraph (7.1) of this Code section, to dispose of any real property for fair market value, regardless of prior development of such property as a project, whenever the board of directors of the authority may deem such disposition to be in the best interests of the authority if the board of directors of the authority prior to such disposition shall determine that such real property no longer can be used advantageously as a project for the development of trade, commerce, industry, and employment opportunities;

(7.1) Notwithstanding any other provision of this chapter to the contrary, to dispose of any real property for fair market value or any

amount below fair market value as determined by the board of directors of the authority, regardless of prior development of such property as a project, whenever the board of directors of the authority may deem such disposition to be in the best interests of the authority if the board of directors of the authority prior to such disposition shall determine that such real property no longer can be used advantageously as a project for the development of trade, commerce, industry, and employment opportunities and if title to such real property is to be transferred to the state;

(8) To mortgage, convey, pledge, or assign any properties, revenues, income, tolls, charges, or fees owned or received by the authority;

(9) To appoint officers and retain agents, engineers, attorneys, fiscal agents, accountants, and employees and to provide for their compensation and duties;

(10) To extend credit or make loans to any person, firm, corporation, or other industrial entity for the planning, design, construction, acquisition, or carrying out of any project, which credit or loans shall be secured by loan agreements, mortgages, security agreements, contracts, and all other instruments, fees, or charges, upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provision for the establishment and maintenance of reserves and insurance funds; and, in the exercise of powers granted by this Code section in connection with a project for such person, firm, corporation, or other industrial entity, to require the inclusion in any contract, loan agreement, security agreement, or other instrument, of such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(11) To acquire, accept, or retain equitable interests, security interests, or other interest in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer, in order to secure the repayment of any moneys loaned or credit extended by the authority;

(12) To construct, acquire, own, repair, remodel, maintain, extend, improve, and equip projects located on land owned or leased by the authority or land owned or leased by others and to pay all or part of the cost of any such project from the proceeds of revenue bonds of the authority or from any contribution or loans by persons, firms, or corporations or any other contribution, all of which the authority is authorized to receive, accept, and use;

(13) To borrow money and issue its revenue bonds and bond anticipation notes from time to time and to use the proceeds thereof

for the purpose of paying all or part of the cost of any project, including the cost of extending, adding to, or improving the project, or for the purpose of refunding any such bonds of the authority theretofore issued and to otherwise carry out the purposes of this chapter and to pay all other costs of the authority incident to or necessary and appropriate to such purposes, including the providing of funds to be paid into any fund or funds to secure such bonds and notes, provided that all such bonds and notes shall be issued in accordance with the procedures and subject to the limitations set forth in Code Section 36-62-8;

(14) As security for repayment of authority obligations, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of such authority and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property of the authority upon default, on such obligations, either in payment of principal or interest or in the performance of any term or condition, as are contained in such agreement or indenture. This state, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right which it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered, and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof;

(15) If any authority authorizing an air transportation facility, to contract with any county or municipal corporation in the state; and any county or municipal corporation in the state is empowered to contract with any such authority to furnish air transportation services where such service is not otherwise in existence;

(16) To expend for the promotion of industry, agriculture, and trade within its area of operations any funds of the authority determined by the authority to be in excess of those needed for the other corporate purposes of the authority; and

(17) To do all things necessary or convenient to carry out the powers expressly conferred by this chapter.

(b) This Code section shall not be construed as authorizing an authority as defined in this chapter to exercise the power of eminent domain. (Ga. L. 1963, p. 531, § 5; Ga. L. 1969, p. 137, § 4; Ga. L. 1975, p. 1259, § 2; Ga. L. 1976, p. 708, § 3; Ga. L. 1987, p. 1067, § 1; Ga. L. 1991, p. 1044, § 1; Ga. L. 1995, p. 440, § 1; Ga. L. 2006, p. 39, § 23/HB 1313.)

Editor's notes. — Ga. L. 2006, p. 39, § 1/HB 1313, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'The Landowner's Bill of Rights and Private Property Protection Act.'"

Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to petitions for condemnation filed on or after April 4, 2006.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 157 (2006).

JUDICIAL DECISIONS

Nursing home is proper project. — Health care need not be listed in the Constitution as a public purpose for nursing homes to be a proper project under O.C.G.A. Ch. 62, T. 36. Development Auth. v. Beverly Enters., 247 Ga. 64, 274 S.E.2d 324 (1981).

Cited in Day v. Development Auth., 248 Ga. 488, 284 S.E.2d 275 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Equipment certified as necessary if enhances pollution abatement goal. — Environmental Protection Division of the Department of Natural Resources may certify equipment or facilities as necessary and in furtherance of pollution abatement and control purposes, pursuant to this chapter and apposite Internal Revenue Service regulations, if the equipment or facilities enhance the industry's pollution abatement goal and, although possibly having other functions, have as their predominant purpose the assistance or aid of pollution control or abatement. 1973 Op. Att'y Gen. No. 73-175.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 485 et seq., 554. 64 Am. Jur. 2d, Public Securities and Obligations, § 72.

C.J.S. — 63 C.J.S., Municipal Corporations, § 1143 et seq. 64 C.J.S., Municipal Corporations, §§ 1279, 1280, 1602 et seq.

ALR. — Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 ALR 1109.

Disposition of revenues from operation of revenue-producing enterprise owned by municipal corporation, 165 ALR 854.

36-62-6.1. Obtaining real property within adjoining county which will be exchanged for federal property.

No development authority of a county or municipality within the county or joint development authority within the county shall purchase or accept title to any real property located in an adjoining county, which property will be exchanged for certain property belonging to the federal government as authorized by federal law, without the written consent of the governing authority of such adjoining county wherein the real property is located; provided, however, that the provisions of this Code section shall not apply to any agreement entered into by two or more counties, municipal corporations, consolidated governments, or development authorities or any combination thereof prior to July 1, 1994, nor

shall the transfer of any land pursuant to any such agreement be affected by this Code section. (Code 1981, § 36-62-6.1, enacted by Ga. L. 1994, p. 1940, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "this Code section" was substituted for "this Code Section" near the middle of this Code section.

36-62-7. Operation of project by governmental units prohibited; sale or lease of property for operation.

No project acquired under this chapter shall be operated by an authority or any municipal corporation, county, or other governmental subdivision. Such a project shall be leased or sold to, or managed by, one or more persons, firms, or private corporations. Any disposition of real property by an authority pursuant to paragraph (7) of Code Section 36-62-6 shall be made to one or more persons, firms, corporations, or governmental or public entities. If revenue bonds or other obligations are to be issued to pay all or part of the cost of the project, the project must be so leased or the contract for its sale or management must be entered into prior to or simultaneously with the issuance of the bonds or obligations; provided, however, that the acquisition and development of land by an authority as the site for an industrial park as provided in this chapter or the acquisition and development of land by an authority as the site for a sports facility or amphitheater in accordance with Code Section 36-62-2 and the operation of such a sports facility or amphitheater shall not be deemed to be the operation of a project and, notwithstanding anything in this chapter to the contrary, an authority shall not be required to enter into a lease of such a project or a contract for its sale or management as a condition to the issuance of bonds or other obligations of the authority to provide financing therefor. If sold, the purchase price may be paid at one time or in installments falling due over not more than 40 years from the date of transfer of possession. The lessee or purchaser shall be required to pay all costs of operating and maintaining the leased or purchased property and to pay rentals or installments in amounts sufficient to pay the principal of and the interest and premium, if any, on all of its bonds and other obligations as such principal and interest become due. If the project is managed, the management contract must contain a term not less than the final maturity date of any bonds or other obligations of the authority to provide financing for the managed project and must provide that all costs of operating and maintaining the managed project, including all management fees payable under the management contract, shall be paid solely from the revenues of the managed project and from the proceeds of any bonds or other obligations of the authority to provide financing for the managed project. Any such management contract may contain provisions allowing the authority to terminate the management

contract, but if the authority exercises any right to terminate a management contract, it must immediately enter into another management contract meeting the requirements of this Code section. (Ga. L. 1963, p. 531, § 6; Ga. L. 1969, p. 137, § 5; Ga. L. 1982, p. 1706, §§ 3, 8; Ga. L. 1987, p. 1067, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 1996, p. 1105, § 2; Ga. L. 2003, p. 390, § 3.)

JUDICIAL DECISIONS

Cited in Development Auth. v. Beverly Enters., 247 Ga. 64, 274 S.E.2d 324 (1981); DeKalb County Bd. of Tax Assessors v. W.C. Harris & Co., 248 Ga. 277, 282 S.E.2d 880 (1981).

36-62-8. Obligations of authority; use of proceeds; status as revenue obligations; subsequent series of bonds or notes; bond anticipation notes; interest rates; issuance and validation.

(a) Subject to the limitations and procedures provided by this Code section, the obligations of any authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to secure obligations, security agreements, or mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority. The authority, in such instruments, may provide for the pledging of all or any part of its revenues, income, or charges and for the mortgaging, encumbering, or conveying of all or any part of its real or personal property; may covenant against pledging any or all of its revenues, income, or charges; and may further provide for the disposition of proceeds realized from the sale of any bonds and bond anticipation notes, for the replacement of lost, destroyed, stolen, or mutilated bonds and notes, and for the payment and redemption of such bonds and notes. Similarly, subject to the limitations and procedures of this Code section, undertakings of an authority may prescribe the procedure by which bondholders and noteholders may enforce rights against the authority and may provide for rights upon breach of any covenant, condition, or obligation of the authority; and bonds, resolutions, trust indentures, mortgages, or deeds to secure obligations executed by an authority and bond anticipation notes executed by an authority may contain such provisions not otherwise contrary to law as the authority shall deem necessary or desirable.

(b) The proceeds derived from the sale of all bonds and bond anticipation notes issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project, including the cost of extending, financing, adding to, or improving the project, for the

purpose of refunding any bond anticipation notes issued in accordance with this chapter or refunding any previously issued bonds of the authority.

(c) All bonds and bond anticipation notes issued by an authority shall be revenue obligations of the authority and may be made payable out of any revenues or other receipts, funds, or moneys of the authority, subject only to any agreements with the holders of other bonds or bond anticipation notes or to particular security agreements pledging any particular revenues, receipts, funds, or moneys.

(d) Issuance by an authority of one or more series of bonds or bond anticipation notes for one or more purposes shall not preclude it from issuing other bonds or notes in connection with the same project or with any other projects; but the proceeding wherein any subsequent bonds or bond anticipation notes are issued shall recognize and protect any prior pledge or mortgage made in any prior security agreement or made for any prior issue of bonds or bond anticipation notes, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds or bond anticipation notes on a parity with such prior issue.

(e) An authority shall have the power and is authorized, whenever revenue bonds of the authority have been validated as provided in this chapter, to issue, from time to time, its notes in anticipation of the issuance of such bonds as validated and to renew, from time to time, any such notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public or private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof; and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of the notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

(f) The interest rate on or rates to be borne by any bonds, notes, or other obligations issued by the authority shall be fixed by the board of directors of the authority. Any limitations with respect to interest rates found in Article 3 of Chapter 82 of this title or the usury laws of this state shall not apply to obligations issued under this chapter.

(g) All revenue bonds issued by an authority under this chapter shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, except as provided in subsection (f) of this Code section and except as specifically set forth below:

(1) Revenue bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide;

(2) Revenue bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the judicial circuit in which the issuing authority is located may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state;

(3) The notice to the district attorney or the Attorney General and the notice to the public of the time, place, and date of the validation hearing need not state the rate of interest the bonds will bear;

(4) The term "cost of project" shall have the meaning prescribed in paragraph (2) of Code Section 36-62-2 whenever referred to in bond resolutions of an authority, bonds and bond anticipation notes issued by an authority, or notices and proceedings to validate such bonds. (Ga. L. 1963, p. 531, § 7; Ga. L. 1969, p. 137, § 6; Ga. L. 1976, p. 708, § 4; Ga. L. 1982, p. 3, § 36; Ga. L. 1982, p. 1706, §§ 4, 9.)

Cross references. — Revenue bonds generally, § 36-82-60 et seq. Repeal of interest rate limitations, § 36-82-123.

JUDICIAL DECISIONS

Cited in Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62 (1987).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2118 et seq., 2125.

ALR. — Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 ALR 1109.

36-62-9. Purposes of chapter; issuance of bonds or bond anticipation notes; exceptions.

The purposes of this chapter are to develop and promote trade, commerce, industry, and employment opportunities for the public good and the general welfare and to promote the general welfare of the state. No bonds or bond anticipation notes, except refunding bonds, shall be issued by an authority under this chapter unless its board of directors adopts a resolution finding that the project for which such bonds or notes are to be issued will promote the foregoing objectives and will increase or maintain employment in the territorial area of such authority. Notwithstanding the foregoing requirement:

(1) Bonds or bond anticipation notes may be issued to finance projects for air and water pollution control facilities and for sewage and solid waste disposal facilities, as provided in this chapter, without a finding that the project will increase or maintain employment, so long as the appropriate certification described in this chapter has been secured from the federal, state, or local agency having jurisdiction in the premises; and

(2) Bonds or bond anticipation notes may also be issued by an authority to finance the acquisition or development of land as the site for an industrial park as provided in this chapter without a finding that the project will increase or maintain employment if its board of directors shall adopt a resolution finding that the tract of land to be included in the project is not intended for use by a single enterprise; will be suitable primarily for use as building sites for a group of enterprises engaged in industrial, distribution, or wholesale businesses; and that either:

(A) The control and administration of the tract is to be vested in the authority or in another county or joint county and municipal development authority (or in a corporation organized under Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code") having as one of its purposes the development of trade, commerce, industry, and employment opportunities; or

(B) The uses of such tract of land are to be regulated by protective restrictions to be approved by the authority and determined by the authority to be appropriate to encourage and facilitate use thereof by business enterprises engaged in industrial, distribution, or wholesale businesses. (Ga. L. 1963, p. 531, § 9; Ga. L. 1969, p. 137, § 7; Ga. L. 1971, p. 177, § 2; Ga. L. 1976, p. 708, § 5; Ga. L. 1982, p. 1706, §§ 5, 10; Ga. L. 1983, p. 3, § 27; Ga. L. 1984, p. 22, § 36; Ga. L. 1987, p. 3, § 36.)

Cross references. — Georgia Nonprofit Corporation Code, T. 14, C. 3.

JUDICIAL DECISIONS

General Assembly has not defined "projects" to include all trade and commerce in this state. Day v. Development Auth., 248 Ga. 488, 284 S.E.2d 275 (1981).

Fact that all final blueprints and specifications were not incorporated into resolution does not require invalidation of the bonds. Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62 (1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 280 et seq. 64 Am. Jur. 2d, Public Securities and Obligations, § 113 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2122, 2123, 2125, 2134 et seq.

36-62-10. Obligations of authority not indebtedness of state or political subdivisions.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the State of Georgia or of any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of this state or of any such county, municipal corporation, or political subdivision. All such bonds and obligations shall be payable solely from the revenues therein pledged to such payment, including pledged rentals, sales proceeds, insurance proceeds, and condemnation awards; and no holder or holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of this state or of any county, municipal corporation, or political subdivision thereof, nor to enforce the payment thereof against any property of the state or of any such county, municipal corporation, or political subdivision. (Ga. L. 1963, p. 531, § 12; Ga. L. 1969, p. 137, § 9.)

OPINIONS OF THE ATTORNEY GENERAL

Development authority can issue promissory note for authorized purpose if note is payable solely from revenues pledged therein for such payment. 1974 Op. Att'y Gen. No. U74-112.

36-62-11. Construction of chapter generally; effect of conflict between chapter and other provisions of law; applicability of certain other provisions of law to proceedings under chapter.

This chapter shall be liberally construed to effect the purposes hereof, and insofar as this chapter may be inconsistent with the provisions of any other law, including the charter of any municipal corporation, this chapter shall be controlling. The sale or issuance of bonds by any authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008," or any other law. No proceeding or publication not required in this chapter shall be necessary to the performance of any act authorized in this chapter, nor shall any such act be subject to referendum. (Ga. L. 1963, p. 531, § 11; Ga. L. 1969, p. 137, § 8; Ga. L. 2008, p. 381, § 11/SB 358.)

JUDICIAL DECISIONS

O.C.G.A. Ch. 62, T. 36 is to be liberally construed; liberally, but not ultraliberally. Day v. Development Auth., 248 Ga. 488, 284 S.E.2d 275 (1981).

Section preempted by the War on Terrorism Local Assistance Act, O.C.G.A. § 36-75-11(c). — Superior court did not err in finding that a county development authority was within the category of authorities governed by the War on Terrorism Local Assistance Act, O.C.G.A. § 36-75-11(c), because § 36-75-11(c) was a general law that preempted by implication the exemption from referenda set forth in the Development Authorities Law, O.C.G.A. § 36-62-11, as to those development authorities that met the criteria of authorities defined in § 36-75-11(c). Dev. Auth. v. State, 286 Ga. 36, 684 S.E.2d 856 (2009).

36-62-12. Previously created authority not affected by chapter.

Any public corporation, industrial development authority, or payroll authority created prior to March 28, 1969, by legislative Act or constitutional amendment shall not be affected by this chapter but shall be entitled to continue in existence and exercise all powers heretofore or hereafter granted thereto. (Ga. L. 1969, p. 137, § 12.)

36-62-13. Disposition of property of certain authorities dissolved by operation of law.

The real and personal property of any development authority which was created for a county prior to July 1, 1983, by constitutional amendment and which was dissolved by operation of law pursuant to Article XI, Section I, Paragraph IV(c) of the Constitution shall by operation of law become the property of any development authority subsequently created by such county pursuant to this chapter or, in the absence thereof, shall become the property of the county. (Code 1981, § 36-62-13, enacted by Ga. L. 1990, p. 383, § 1.)

36-62-14. Perpetual existence of authority; dissolution.

(a) Except as otherwise provided in this Code section, an authority created pursuant to this chapter shall have perpetual existence.

(b) If an authority does not have any outstanding unpaid bonds or bond anticipation notes, the authority may be dissolved as provided in this subsection. If the authority was activated for a single county or municipal corporation as provided in Code Section 36-62-4, the authority may be dissolved by adoption of an appropriate resolution by the governing authority of such county or municipal corporation. If the authority was activated for two or more local governments as provided in Code Section 36-62-5.1, the authority may be dissolved by the adoption of appropriate concurrent resolutions by the governing authorities of all such local governments.

(c) If an authority previously activated for a single county or municipal corporation is so dissolved, all assets and debts and rights and obligations of the former authority shall devolve to the parent county or municipal corporation. If an authority previously activated for two or more local governments is so dissolved, all assets and debts and rights and obligations of the former authority shall devolve to the parent local governments in such proportions and manner as shall be specified in the concurrent resolutions dissolving the authority.

(d) Where an authority is dissolved as provided in this Code section, it shall cease to exist as of the effective date specified in the appropriate resolution or resolutions. The dissolution of an authority, however, shall not prevent the subsequent activation of a new authority under this chapter for the same local government or local governments, in the same manner as otherwise specified in this chapter. (Code 1981, § 36-62-14, enacted by Ga. L. 2000, p. 1336, § 2.)

CHAPTER 62A

CONDUCT OF MEMBERS OF LOCAL AUTHORITIES

Article 1

General Provisions

Sec.
36-62A-1. Ethics; conflicts of interest.

Article 2

Development Authorities

36-62A-20. Development authority defined.
36-62A-21. Required training on development and redevelopment programs.
36-62A-22. Inapplicable to directors of downtown development authorities.

ARTICLE 1

GENERAL PROVISIONS

36-62A-1. Ethics; conflicts of interest.

(a)(1) All directors and members of any downtown development authority created pursuant to Chapter 42 of this title, known as the "Downtown Development Authorities Law," or of any authority created by or pursuant to a local constitutional amendment, whether for the purpose of promoting the development of trade, commerce, industry, and employment opportunities or for other purposes, to the extent that the Constitution of Georgia authorizes the General Assembly by law to define further and to enlarge or restrict the powers and duties of any such authority created by or pursuant to a local constitutional amendment shall comply with the provisions of Code Section 45-10-3, relating to a code of ethics of members of boards, commissions, and authorities and shall not engage in any transaction with the authority.

(2) The provisions of paragraph (9) of Code Section 45-10-3 and of paragraph (1) of this subsection shall be deemed to have been complied with and any such authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or member or any organization or person with which any director or member of said authority is in any way interested or involved, provided (1) that any interest or involvement by such director or member is disclosed in advance to the directors or members of the authority and is recorded in the minutes of the authority, (2) that any interest or involvement by such director with a value in excess of $200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30

days in advance of consummating such transaction, (3) that no director having a substantial interest or involvement may be present at that portion of an authority meeting during which discussion of any matter is conducted involving any such organization or person, and (4) that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person. As used in this subsection, a "substantial interest or involvement" means any interest or involvement which reasonably may be expected to result in a direct financial benefit to such director or member as determined by the authority, which determination shall be final and not subject to review.

(b) Nothing contained in subsection (a) of this Code section or in Code Section 45-10-3 shall be deemed to prohibit any director who is present at any decision of the authority from providing legal services in connection with any of the undertakings of the authority or from being paid for such services. (Ga. L. 1982, p. 1726, § 1; Code 1981, § 36-62A-1, enacted by Ga. L. 1982, p. 1726, § 2; Ga. L. 1983, p. 1346, § 5; Ga. L. 1984, p. 22, § 36; Ga. L. 2010, p. 834, § 3/SB 456.)

The 2010 amendment, effective July 1, 2010, in subsection (a)(2), in the first sentence, inserted "that any interest or involvement by such director with a value in excess of $200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30 days in advance of consummating such transaction, (3)" and substituted "(4)" for "(3)", and substituted "means" for "shall mean" near the end of the last sentence.

Law reviews. — For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Interest in bank providing loans. — Individual, who is a chairperson and stockholder in a local bank negotiating authority loans, may be a member of a downtown authority and an industrial authority provided that the provisions of O.C.G.A. §§ 36-62-5 and 36-62A-1 are met. 1983 Op. Att'y Gen. No. U83-30.

ARTICLE 2

DEVELOPMENT AUTHORITIES

36-62A-20. Development authority defined.

As used in this article, the term "development authority" means any authority created by law or by constitutional amendment for one or more counties or municipalities, or any combination thereof, for the purpose of promoting the development of trade, commerce, industry, and employment opportunities or for other purposes. Without limiting the generality of the foregoing, such term shall specifically include all

authorities created pursuant to Chapter 62 of this title. (Code 1981, § 36-62A-20, enacted by Ga. L. 2000, p. 1362, § 1.)

36-62A-21. Required training on development and redevelopment programs.

Except for a director who is also a member of the governing body of a municipal corporation or county, each director or member of the governing board or body of a development authority shall attend and complete at least eight hours of training on development and redevelopment programs within the first 12 months of the director's or member's appointment to the development authority. Directors and members in office on January 1, 2000, shall be exempt from this requirement unless reappointed for an additional term. (Code 1981, § 36-62A-21, enacted by Ga. L. 2000, p. 1362, § 1.)

36-62A-22. Inapplicable to directors of downtown development authorities.

This article shall not apply to directors of downtown development authorities created pursuant to Chapter 42 of this title, required training for such directors being as provided for in that chapter. (Code 1981, § 36-62A-22, enacted by Ga. L. 2000, p. 1362, § 1.)

CHAPTER 63

RESOURCE RECOVERY DEVELOPMENT AUTHORITIES

Sec.
36-63-1. Short title.
36-63-2. Purpose of chapter.
36-63-3. Constitutional authority for chapter; finding of public purposes; tax exemption.
36-63-4. Definitions.
36-63-5. Authorities created; adoption and filing of resolution or ordinance of need; joint authorities.
36-63-6. Appointment and terms of members of board of directors; officers; compensation; adoption of bylaws and regulations; delegation of powers and duties.
36-63-7. Quorum of board; requirement of majority vote.
36-63-8. Powers of authority generally.
36-63-9. Obligations of authority; use of proceeds; status as revenue obligations; subsequent series of bonds or notes; bond anticipation notes; interest rates; issuance and validation.
36-63-10. Obligations of authority not indebtedness of state or political subdivisions.
36-63-11. Construction of chapter generally; applicability of certain other provisions of law to proceedings under chapter; effect of chapter with respect to other development authorities.

Cross references. — Waste management generally, T. 12, C. 8.

36-63-1. Short title.

This chapter may be referred to as the "Resource Recovery Development Authorities Law." (Code 1933, § 69-1501a, enacted by Ga. L. 1978, p. 1898, § 1.)

36-63-2. Purpose of chapter.

(a) The recovery and utilization of resources contained in sewage sludge and solid waste and the generation of electrical and other forms of energy from water resources promotes trade, commerce, industry, and employment opportunities by creating a new industry to recover and utilize such resources and by creating a climate highly favorable to the location of new industrial facilities in areas where such resources are recovered or available by providing additional sources of energy and a method of processing and disposing of sewage and solid waste in an efficient and environmentally sound manner. It is therefore in the public interest and is vital to the public welfare of the people of the State of Georgia, and it is declared to be the purpose of this chapter, to create resource recovery development authorities to recover and utilize resources contained in sewage sludge, solid waste, and water resources.

It is likewise in the public interest and is vital to the public welfare of the people of the State of Georgia, and it is declared to be the intent of this chapter to preserve and do nothing to interfere with the practice of recycling solid waste for use again by industry and the public thereby preserving and reusing important natural and other resources, except as specifically provided for in this chapter.

(b) It is the clearly articulated and affirmatively expressed policy of the State of Georgia that any resource recovery development authority, other authority, municipal corporation, county, other governmental body or agency, or private party shall be authorized, with respect to any solid waste, sewage sludge, or resources contained therein which the owner or generator thereof makes available to such resource recovery development authority, other authority, municipal corporation, county, or other governmental body or agency or private party to enter into agreements or in the case of a county or municipal corporation to enact ordinances or resolutions in furtherance of a project granting, directing, or providing for an exclusive right or rights in any of the foregoing parties with respect to such solid waste, sewage sludge, or resources contained therein, including, but not limited to, the exclusive right to collect, acquire, receive, transport, store, treat, process, utilize, sell, or dispose of discarded solid waste, sewage sludge, or resources contained therein; provided, however, excluded from such authorization shall be any rights to materials or substances contained in such solid waste, sewage sludge, or resources contained therein as may be separated for recycling at any time prior to pick up by or delivery to such resource recovery development authority, other authority, municipal corporation, county, or other governmental body or agency or private party of such discarded solid waste, sewage sludge, or resources contained therein. (Code 1933, § 69-1502a, enacted by Ga. L. 1978, p. 1898, § 1; Ga. L. 1983, p. 515, § 1; Ga. L. 1984, p. 1694, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 148, 171 et seq., 476, 532 et seq.

36-63-3. Constitutional authority for chapter; finding of public purposes; tax exemption.

This chapter is enacted pursuant to authority granted to the General Assembly by the Constitution of Georgia. Each authority created by this chapter is created for nonprofit and public purposes; and it is found, determined, and declared that the creation of each such authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity and will be performing an essential governmen-

tal function in the exercise of the power conferred upon it by this chapter. For such reasons, the state covenants from time to time with the holders of the bonds issued under this chapter that such authority shall be required to pay no taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others; or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise; and that the bonds of such authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority. (Code 1933, § 69-1511a, enacted by Ga. L. 1978, p. 1898, § 1.)

Law reviews. — For article discussing tax-exempt financing in Georgia, see 18 Ga. St. B.J. 20 (1981).

JUDICIAL DECISIONS

De facto zoning ordinance. — If a regulation has the effect of establishing zones of property in a county in which various uses are permitted and prohibited, then it is a zoning ordinance. Mullis Tree Serv., Inc. v. Bibb County, 822 F. Supp. 738 (M.D. Ga. 1993).

County regulation, in which each area zoned for residential use was to be surrounded by a buffer zone and in which the use of property as a putrescible waste landfill was prohibited, was actually a zoning ordinance, and adoption by an entity lacking power to zone was an ultra vires act. Therefore, this regulation was invalid under state law. Mullis Tree Serv., Inc. v. Bibb County, 822 F. Supp. 738 (M.D. Ga. 1993).

36-63-4. Definitions.

As used in this chapter, the term:

(1) "Authority" means each public corporation created pursuant to this chapter.

(2) "Collection" means the aggregating of solid waste from its primary source and includes all activities up to such time as the waste is delivered to the place at which it is to be processed.

(3) "Cost of project" means all costs of site preparation and other start-up costs; all costs of construction; all costs of real and personal property required for the purposes of the project and facilities related thereto, including land and any rights or undivided interest therein, easements, franchises, fees, permits, approvals, licenses, and certificates and the securing of such permits, approvals, licenses, and

certificates, and all machinery and equipment, including motor vehicles which are used for project functions; financing charges and interest prior to and during construction and during such additional period as the authority may reasonably determine to be necessary for the placing of the project in operation; costs of engineering, architectural, and legal services; cost of plans and specifications and all expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incidental to the financing authorized in this chapter. The costs of any project may also include funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority for the operation of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds or notes issued under this chapter for such project.

(4) "County" means any county of this state or a governmental entity formed by the consolidation of a county and one or more municipal corporations.

(5) "Governing body" means the elected or duly appointed officials constituting the governing body of each municipal corporation and county in the state.

(6) "Municipal corporation" means each city and town in this state.

(7) "Project" means:

(A) The collection and transportation of solid waste and sewage sludge and it shall also mean any property, real or personal, used as or in connection with a facility for the extraction, collection, storage, treatment, processing, utilization, or final disposal of resources contained in sewage sludge or solid waste, including the conversion of sewage sludge, solid waste, or resources contained therein into steam, electricity, oil, charcoal, gas, or any other product or energy source and the collection, storage, treatment, utilization, processing, or final disposal of sewage sludge and solid waste in connection with the foregoing; and

(B) Any property, real or personal, used as or in connection with a facility for the extraction, collection, storage, treatment, processing, or utilization of water resources and the conversion of such resources into any useful form of energy.

(8) "Resources" means any natural or synthetic substance contained in sewage sludge or solid waste which can be processed and

reused in the same or a different form or which can be converted into usable energy and water resources which can be used as energy or converted into usable energy.

(9) "Sewage sludge" means all solid or dissolved materials in domestic or industrial sewage or other significant pollutants in water resources, such as salt, dissolved or suspended solids in waste-water effluents, human wastes, dissolved materials in irrigation return flows, and silt, after they are extracted from the medium in which they are contained.

(10) "Solid waste" means garbage, refuse, or other discarded solid materials, including solid waste materials resulting from industrial and agricultural operations and from community and domestic activities. For purposes of this paragraph, the term "garbage" shall include putrescible wastes, including animal and vegetable matters, animal offal and carcasses, and industrial by-products, and the term "refuse" shall include all nonputrescible wastes. (Code 1933, § 69-1503a, enacted by Ga. L. 1978, p. 1898, § 1; Ga. L. 1983, p. 515, § 2; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 6, § 36.)

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 1 et seq. § 80. 62 C.J.S., Municipal Corporations, 39A C.J.S., Health and Environment, § 1 et seq.

36-63-5. Authorities created; adoption and filing of resolution or ordinance of need; joint authorities.

(a) There is created in and for each county and municipal corporation in this state a public body corporate and politic, to be known as the "resource recovery development authority" of such county or municipal corporation. No authority shall transact any business or exercise any powers under this chapter until the governing body of the county or municipal corporation, by proper ordinance or resolution, declares that there is a need for an authority to function in the county or municipal corporation.

(b) Any number of counties and municipal corporations, whether or not located in the same county or within a county participating in the formation of a joint authority, may jointly form an authority, to be known as the "joint resource recovery development authority" for such counties and municipal corporations. No authority shall transact any business or exercise any powers under this chapter until the governing authorities of the units of local government involved declare, by ordinance or resolution, that there is a need for an authority to function and until the governing authorities authorize the chief elected official of the unit of local government to enter into an agreement with the other

units of local government for the activation of an authority and such agreement is executed.

(c) A copy of such ordinances, resolutions, and agreements shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under this chapter. (Code 1933, § 69-1504a, enacted by Ga. L. 1978, p. 1898, § 1; Ga. L. 1984, p. 1694, § 2.)

36-63-6. Appointment and terms of members of board of directors; officers; compensation; adoption of bylaws and regulations; delegation of powers and duties.

Control and management of the authority shall be vested in a board of five directors who shall be residents of the county or municipal corporation and shall serve at the pleasure of the governing authority of the county or municipal corporation. Directors shall be appointed, and may be reappointed, for terms of four years. In the case of a joint resource recovery development authority, each unit of local government participating in the authority shall appoint two members, with an additional member to be appointed by the directors themselves. The directors shall elect one of their members as chairman and another as vice-chairman and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may but need not be a director. The directors shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties. The directors may make bylaws and regulations for the governing of the authority and may delegate to one or more of the officers, agents, and employees of the authority such powers and duties as may be deemed necessary and proper. (Code 1933, § 69-1505a, enacted by Ga. L. 1978, p. 1898, § 1.)

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 562 et seq.

36-63-7. Quorum of board; requirement of majority vote.

A majority of the directors shall constitute a quorum for the transaction of business of the authority. However, any action with respect to any project of the authority must be approved by the affirmative vote of not less than a majority of the directors. (Code 1933, § 69-1506a, enacted by Ga. L. 1978, p. 1898, § 1.)

36-63-8. Powers of authority generally.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this

chapter, including, but without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To acquire, construct, improve, or modify, to place into operation, and to operate or cause to be placed into operation and operated, either as owner of all or of any part in common with others, a project or projects within the county in which the authority is activated and, subject to execution of agreements with the appropriate political subdivisions affected, within other counties, and to pay all or part of the cost of any such project or projects from the proceeds of revenue bonds of the authority or from any contribution or loans by persons, firms, or corporations or any other contribution, all of which the authority is authorized to receive, accept, and use;

(4) To acquire, in its own name, by purchase on such terms and conditions and in such manner as it may deem proper or by gift, grant, lease, or otherwise, real property or rights and easements therein and franchises and personal property necessary or convenient for its corporate purposes, which purposes shall include, but shall not be limited to, the constructing or acquiring of a project, the improving, extending, adding to, reconstructing, renovating, or remodeling of any project or part thereof already constructed or acquired, or demolition to make room for such project or any part thereof, and to insure the same against any and all risks as such insurance may, from time to time, be available; the authority may also use such property and rent or lease the same to or from others or make contracts with respect to the use thereof or sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner which the authority deems to the best advantage of itself and its purposes; provided that the powers to acquire, use, and dispose of property as set forth in this paragraph shall include the power to acquire, use, and dispose of any interest in such property, whether divided or undivided, which acquisition may result in the ownership of such property or any part thereof in common with any other party or parties, public or private; and title to any such property of the authority, however, shall be held by the authority exclusively for the benefit of the public;

(5) To make contracts and leases and to execute all instruments necessary or convenient, including contracts for construction of projects and leases of projects or contracts with respect to the use of projects which it causes to be acquired or constructed; provided that all private persons, firms, and corporations, this state, and all political subdivisions, departments, instrumentalities, or agencies of

the state or of local government are authorized to enter into contracts, leases, or agreements with the authority, upon such terms and for such purposes as they deem advisable; and without limiting the generality of the above, authority is specifically granted to municipal corporations and counties and to the authority to enter into contracts, lease agreements, or other undertakings relative to the furnishing of project activities and facilities or either of them by the authority to such municipal corporations and counties and by such municipal corporations and counties to the authority for a term not exceeding 50 years;

(6) To exercise any one or more of the powers, rights, and privileges conferred by this Code section either alone or jointly or in common with one or more other public or private parties or public and private parties; in any such exercise of such powers, rights, and privileges jointly or in common with others with respect to the construction, operation, and maintenance of project facilities, the authority may own an undivided interest in such facilities with any other party with which it may jointly or in common exercise the rights and privileges conferred by this chapter; the authority may enter into an agreement or agreements with respect to any such project facility with the other party or parties participating therein; any such agreement may contain such terms, conditions, and provisions, consistent with this chapter, as the parties thereto shall deem to be in their best interests; any such agreement may include, but need not be limited to, provisions for the construction, operation, and maintenance of such project facility by any one or more party of the parties to such agreement, which party or parties shall be designated in or pursuant to such agreement as agent or agents on behalf of itself and one or more of the other parties thereto, or by such other means as may be determined by the parties thereto, and may include provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements, and disposals with respect to such facility; in carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties; provided, however, the agent shall act for the benefit of the public; notwithstanding anything contained in any other law to the contrary, pursuant to the terms of any such agreement, the authority may delegate its powers and duties with respect to the construction, operation, and maintenance of such facility to the party acting as agent; and all actions taken by such agent in accordance with the provisions of such agreement may be binding upon the authority without further action or approval of the authority;

(7) To extend credit or make loans to any person, firm, corporation, or other industrial entity for the planning, design, construction, acquisition, or carrying out of any project, which credit or loans shall be secured by loan agreements, mortgages, security agreements, contracts, and all other instruments or fees or charges, upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provision for the establishment and maintenance of reserves and insurance funds, and in the exercise of powers granted by this Code section in connection with a project for such person, firm, corporation, or other industrial entity, to require the inclusion in any contract, loan agreement, security agreement, or other instrument of such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(8) To acquire, accept, or retain equitable interests, security interests, or other interest in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer, in order to secure the repayment of any moneys loaned or credit extended by the authority;

(9) To accept, receive, and administer gifts, grants, appropriations, and donations of money, materials, and property of any kind, including loans and grants from the United States of America or this state, or a unit of local government, or any agency, department, authority, or instrumentality of either upon such terms and conditions as the United States of America, this state, a unit of local government, or such agency, department, authority, or instrumentality shall impose, to administer trusts, and to sell, lease, transfer, convey, appropriate, and pledge any and all of its property and assets;

(10) To invest any accumulation of its funds in any fund or reserve in any manner that public funds of this state or its political subdivisions may be invested;

(11) To do any and all things necessary or proper for the accomplishment of the objectives of this chapter and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state, including the power to employ professional and administrative staff and personnel and to retain legal, engineering, fiscal, accounting, and other professional services; the power to purchase all kinds of insurance, including, without limitation, insurance against tort liability and against risks of damage to property; the power to borrow money for any of the corporate purposes of the authority; the power to indemnify and hold harmless any parties contracting with the authority or its agents from damage to persons or property; and the power to act as self-insurer with respect to any loss or liability;

provided, however, that obligations of the authority other than revenue bonds, for which provision is made in this chapter, shall be payable from the general funds of the authority and shall not be a charge against any special fund allocated to the payment of revenue bonds;

(12) To mortgage, convey, pledge, or assign any properties, revenues, income, tolls, charges, or fees owned or received by the authority;

(13) To borrow money and issue its revenue bonds and bond anticipation notes from time to time and to use the proceeds thereof for the purpose of paying all or part of the cost of any project, including the cost of extending, adding to, or improving such project, or for the purpose of refunding any such bonds of the authority theretofore issued; and to otherwise carry out the purposes of this chapter and to pay all other costs of the authority incident to, or necessary and appropriate to, such purposes, including the providing of funds to be paid into any fund or funds to secure such bonds and notes, provided that all such bonds and notes shall be issued in accordance with the procedures and subject to the limitations set forth in Code Section 36-63-9; and

(14) As security for repayment of authority obligations, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of such authority and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property of the authority upon default on such obligations either in payment of principal or interest or in the performance of any term or condition contained in such agreement or indenture; this state, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein waives any right which it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered, and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof.

(b) Notwithstanding any other provisions of this chapter, an authority is prohibited from bidding or paying compensation for solid wastes being privately processed or reused. (Code 1933, § 69-1507a, enacted by Ga. L. 1978, p. 1898, § 1; Ga. L. 1979, p. 1006, § 1; Ga. L. 1987, p. 3, § 36.)

JUDICIAL DECISIONS

Cited in AMBAC Indem. Corp. v. Akridge, 262 Ga. 773, 425 S.E.2d 637 (1993).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 568 et seq. 63 C.J.S., Municipal Corporations, § 1142 et seq. 64A C.J.S., Municipal Corporations, § 2118 et seq.

ALR. — Disposition of revenues from operation of revenue-producing enterprise owned by municipal corporation, 165 ALR 854.

36-63-9. Obligations of authority; use of proceeds; status as revenue obligations; subsequent series of bonds or notes; bond anticipation notes; interest rates; issuance and validation.

(a) Subject to the limitations and procedures provided by this Code section, the obligations of any authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to secure obligations, security agreements, or mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority. The authority, in such instruments, may provide for the pledging of all or any part of its revenues, income, or charges and for the mortgaging, encumbering, or conveying of all or any part of its real or personal property; may covenant against pledging any or all of its revenues, income, or charges; and may further provide for the disposition of proceeds realized from the sale of any bonds and bond anticipation notes, for the replacement of lost, destroyed, stolen, or mutilated bonds and notes, and for the payment and redemption of such bonds and notes. Similarly, subject to the limitations and procedures of this Code section, undertakings of an authority may prescribe the procedure by which bondholders and noteholders may enforce rights against the authority and provide for rights upon breach of any covenant, condition, or obligation of the authority. Bonds, resolutions, trust indentures, mortgages, or deeds to secure obligations executed by an authority and bond anticipation notes executed by an authority may contain such provisions not otherwise contrary to law as the authority shall deem necessary or desirable.

(b) The proceeds derived from the sale of all bonds and bond anticipation notes issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project, including the cost of extending, financing, adding to, or improving such project, or for the purpose of refunding any bond anticipation notes issued in accordance with this chapter or refunding any previously issued bonds of the authority.

(c) All bonds and bond anticipation notes issued by an authority shall be revenue obligations of such authority and may be made payable out of any revenues or other receipts, funds, or moneys of the authority, subject only to any agreements with the holders of other bonds or bond anticipation notes or to particular security agreements pledging any particular revenues, receipts, funds, or moneys.

(d) Issuance by an authority of one or more series of bonds or bond anticipation notes for one or more purposes shall not preclude it from issuing other bonds or notes in connection with the same project or with any other projects, but the proceeding wherein any subsequent bonds or bond anticipation notes shall be issued shall recognize and protect any prior pledge or mortgage made in any prior security agreement or made for any prior issue of bonds or bond anticipation notes, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds or bond anticipation notes on a parity with such prior issue.

(e) An authority shall have the power and is authorized, whenever revenue bonds of the authority have been validated as provided in this chapter, to issue, from time to time, its notes in anticipation of the issuance of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public or private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any such resolution or resolutions; and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of the notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

(f) The interest rate on or rates to be borne by any bonds, notes, or other obligations issued by the authority shall be fixed by the board of directors of the authority. Any limitations with respect to interest rates found in Article 3 of Chapter 82 of this title or in the usury laws of this state shall not apply to obligations issued under this chapter.

(g) All revenue bonds issued by an authority under this chapter shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, except as provided in subsection (f) of this Code section and except as specifically set forth below in this subsection:

(1) Revenue bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide;

(2) Revenue bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the judicial circuit in which the issuing authority is located may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state;

(3) In lieu of specifying the rate or rates of interest which revenue bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General and the notice to the public of the time, place, and date of the validation hearing may state that the bonds, when issued, will bear interest at a rate not exceeding a minimum per annum rate of interest specified in such notices or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the notices; provided, however, that nothing contained in this paragraph shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices;

(4) The term "cost of project" shall have the meaning prescribed in paragraph (3) of Code Section 36-63-4 whenever referred to in bond resolutions of an authority, bonds and bond anticipation notes issued by an authority, or notices and proceedings to validate such bonds. (Code 1933, § 69-1508a, enacted by Ga. L. 1978, p. 1898, § 1.)

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 485 et seq. 64 Am. Jur. 2d, Public Securities and Obligations, § 193 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2118 et seq., 2184 et seq.

36-63-10. Obligations of authority not indebtedness of state or political subdivisions.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the State of Georgia or of any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of this state or of any such county, municipal corporation, or political subdivision. All such bonds and obligations shall be payable solely from the revenues therein pledged to such payment, including pledged rentals, sales proceeds, insurance proceeds, and condemnation awards; and no holder or holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of this state or of any county, municipal corporation, or political subdivision thereof, nor to enforce the payment thereof against any property of the state or of any such county, municipal corporation, or political subdivision. (Code 1933, § 69-1510a, enacted by Ga. L. 1978, p. 1898, § 1.)

RESEARCH REFERENCES

ALR. — Construction or improvement of sewers as a local or district improvement within provisions authorizing or requiring special assessments or other specified means of defraying expense, 134 ALR 895.

36-63-11. Construction of chapter generally; applicability of certain other provisions of law to proceedings under chapter; effect of chapter with respect to other development authorities.

(a) This chapter shall be liberally construed to effect the purposes hereof. Sale or issuance of bonds by any authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008," or any other law. Any sale or disposition of any useful form of energy produced from a solid waste project financed by revenue bonds issued on or before August 8, 1985, and which is substantially constructed as of January 1, 1987, which sale or disposition is made in the county wherein the project is located shall not be subject to the provisions of Part 3 of Article 1 of Chapter 3 of Title 46, "The Georgia Cogeneration Act of 1979." In the event that the immediately preceding sentence of this subsection shall for any reason be held invalid, the remaining provisions of this subsection and this Code section shall remain in full force and effect. No proceeding or publication not required in this chapter shall be necessary to the performance of any act authorized in this chapter, nor shall any such act be subject to referendum.

(b) A municipal corporation, a county, or any number of counties and municipal corporations shall have the right to activate an authority under this chapter, notwithstanding the existence of any other development authority within the county or municipal corporation created pursuant to any general law or amendment to the Constitution of this state. However, nothing in this chapter shall be construed as repealing, amending, superseding, or altering the organization of or abridging the powers of such authorities as are now in existence. (Code 1933, § 69-1509a, enacted by Ga. L. 1978, p. 1898, § 1; Ga. L. 1984, p. 22, § 36; Ga. L. 1984, p. 1694, § 3; Ga. L. 1987, p. 1021, § 1; Ga. L. 1993, p. 91, § 36; Ga. L. 2008, p. 381, § 11/SB 358.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, a comma was inserted following "invalid" in the fourth sentence of subsection (a).

CHAPTER 64

RECREATION SYSTEMS

Sec.
36-64-1. "Governing body" defined.
36-64-2. Authority to dedicate, set apart, acquire, or lease lands or buildings for recreation; appropriation for equipment and maintenance.
36-64-3. Establishment of system of supervised recreation; designation of board to provide and conduct recreational activities and facilities.
36-64-3.1. Use of dam sites and adjacent land for producing hydroelectric power.
36-64-4. Joint recreation systems.
36-64-5. Establishment of recreation board; powers and responsibilities; members; terms; officers; vacancies.
36-64-6. Acceptance of gifts for recreation purposes.
36-64-7. Issuance of bonds.
36-64-8. Petition for recreation system; provision of system on governing authority's own motion; referendums on issue of special tax and millage increase.
36-64-9. Establishment of system with tax money following favorable vote.
36-64-10. Levy and collection of recreation tax.
36-64-11. Payment of costs and expenses of recreation system; control of recreation fund.
36-64-12. Establishment, maintenance, and conduct of recreation system not mandatory.
36-64-13. Applicability of chapter generally.
36-64-14. Applicability of chapter to recreation and playground commissions, boards, and systems created by special Acts of General Assembly.
36-64-15. Removal of minimum or maximum recreation tax by municipality or county.

Cross references. — Powers and duties of Department of Natural Resources regarding promotion and organization of recreational systems or programs for municipalities, counties, and other governmental entities, § 12-3-1.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Playground Accidents — Human Impact Tolerance, 21 POF2d 701.

Negligent Operation of Public Swimming Pool, 34 POF2d 63.

ALR. — Liability to one struck by golf ball, 53 ALR4th 282.

Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area, 73 ALR4th 496.

36-64-1. "Governing body" defined.

As used in this chapter, the term "governing body" means the mayor and city council, the commissioner and commissioners, or either or both as the case may be, or the governing body, by whatever name called, of

any municipality or county coming under this chapter. (Ga. L. 1923, p. 106, § 1; Code 1933, § 69-601; Ga. L. 1946, p. 152, § 1.)

Law reviews. — For article, "Cities and Towns in Georgia: A Distinction With a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

Constitutionality. — This chapter does not impinge or offend the provisions of Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Wilson v. City Council, 165 Ga. 520, 141 S.E. 412 (1928) (see O.C.G.A. Ch. 64, T. 36).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 280.

C.J.S. — 62 C.J.S., Municipal Corporations, § 268.

36-64-2. Authority to dedicate, set apart, acquire, or lease lands or buildings for recreation; appropriation for equipment and maintenance.

The governing body of any municipality or county may dedicate and set apart for use as parks, playgrounds, and recreation centers and for other recreation purposes any lands or buildings or both, owned or leased by such municipality or county and not dedicated or devoted to another or inconsistent public use. Such municipality or county, in such manner as may now or hereafter be authorized or provided by law for the acquisition of lands or buildings for public purposes by the municipality or county, may acquire or lease lands or buildings or both, within or beyond the corporate limits of the municipality, for parks, playgrounds, recreation centers, and other recreational purposes. When the governing body of the municipality so dedicates, sets apart, acquires, or leases lands or buildings for such purposes, it may, on its own initiative, provide for their conduct, equipment, and maintenance, according to this chapter, by making an appropriation from the general municipal or county funds. (Ga. L. 1923, p. 106, § 2; Code 1933, § 69-602; Ga. L. 1946, p. 152, § 2.)

JUDICIAL DECISIONS

County may condemn private property for recreational park. — County is authorized by law to condemn private property for the public purpose of creating a recreational park. Williams Bros. Lumber Co. v. Gwinnett County, 258 Ga. 243, 368 S.E.2d 310 (1988).

Authority for contracts. — This section authorizes counties to enter into contracts so as to provide recreational facilities within a county. Hancock County v. Williams, 230 Ga. 723, 198 S.E.2d 659 (1973) (see O.C.G.A. § 36-64-2).

When a municipality dedicates property to a public use, the property may be put to all customary uses within

the definition of the use. Any use which is inconsistent, or which substantially and materially interferes, with the use of the property for the particular purpose for which the property was dedicated will constitute a misuser or diversion. Norton v. City of Gainesville, 211 Ga. 387, 86 S.E.2d 234 (1955).

Municipal park is public utility, and portion thereof cannot be leased for term of years for private gain. Norton v. City of Gainesville, 211 Ga. 387, 86 S.E.2d 234 (1955); Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690 (1956).

Land may be dedicated for particular public use with reservation by proprietor of right to use the land for a specified purpose not inconsistent with the legal character of the dedication. City of Abbeville v. Jay, 205 Ga. 743, 55 S.E.2d 129 (1949).

General Assembly may vacate and dispose of park, owned by municipality, which has been dedicated to public use, or authority to do so may be delegated to the municipality, in the absence of constitutional prohibitions. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690 (1956).

Distinction between land held in governmental and proprietary capacities. — There is a clear distinction between property purchased by a municipal corporation and held for use by the corporation as an entity, or in the municipality's proprietary capacity, and property purchased by the city for the public use and benefit of the city's citizens. As to property acquired for strictly corporate purposes and held in the city's proprietary capacity, the power to dispose is unquestioned, but as to the latter, in the absence of express legislative authority, it is only when the public use has been abandoned or the property has become unsuitable or inadequate for the purpose to which the property was dedicated that the city has power to dispose of such property. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690 (1956).

City authorized to sell park land when held in fee and legislature grants authority. — When the city council owned the fee-simple title to a tract of land which had been dedicated to and used by the public as a park, and when the General Assembly expressly conferred upon the city authority to sell and dispose of that property upon conditions with which the city complied, the trial court did not err in holding that the city was authorized to make the sale. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690 (1956).

When legislative power to authorize sale of park land cannot be questioned. — Legislative power to authorize the discontinuance of public parks and the sale of park lands cannot be questioned when the fee is in the city and when in so doing no private property is taken. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690 (1956).

Dedicated land not liable to recall by original proprietor. — It is perfectly obvious that if a dedication of streets and squares was liable to be recalled at the will of the original proprietor, the most destructive hindrance would be thrown in the way of their improvement, and the rankest injustice would be visited upon individuals. City of Abbeville v. Jay, 205 Ga. 743, 55 S.E.2d 129 (1949).

Dedication of land to public use is in nature of estoppel in pais, and when an attempt is made by the proprietor to revoke the dedication by a sale of the land, the proprietor may be enjoined by any person interested in the use. City of Abbeville v. Jay, 205 Ga. 743, 55 S.E.2d 129 (1949).

Cited in City Council v. Newsome, 211 Ga. 899, 89 S.E.2d 485 (1955); City of Gainesville v. Pritchett, 129 Ga. App. 475, 199 S.E.2d 889 (1973); PMS Constr. Co. v. DeKalb County, 243 Ga. 870, 257 S.E.2d 285 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 23 Am. Jur. 2d, Dedication, § 4 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 181. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, §§ 6, 24.

C.J.S. — 64 C.J.S., Municipal Corporations, §§ 1995 et seq., 2000, 2001.

ALR. — To what uses may park property be devoted, 18 ALR 1246; 63 ALR 484; 144 ALR 486.

Power of municipal corporation to establish and maintain golf course, 36 ALR 1301.

Statutes relating to establishment or administration of parks, as encroachment on right of local self-government, 88 ALR 228.

Auditorium or stadium as public purpose for which public funds may be expended or taxing power exercised, 173 ALR 415.

Validity and construction of statute or ordinance requiring land developer to dedicate portion of land for recreational purposes, or make payment in lieu thereof, 43 ALR3d 862.

Public swimming pool as nuisance, 49 ALR3d 652.

Construction of highway through park as violation of use to which park property may be devoted, 60 ALR3d 581.

36-64-3. Establishment of system of supervised recreation; designation of board to provide and conduct recreational activities and facilities.

The governing body of any county or municipality may establish a system of supervised recreation. It may, by resolution or ordinance, vest the power to provide, maintain, and conduct parks, playgrounds, recreation centers, and other recreational activities and facilities in the board of education, park board, or other existing body or in a recreation board, as the governing body may determine. Any board so designated shall have the power to maintain and equip parks, playgrounds, recreation centers, and the buildings thereon; to develop, maintain, and operate all types of recreation facilities; and to operate and conduct facilities on properties controlled by other authorities. It may, for the purpose of carrying out the provisions of this chapter, employ playleaders, playground or community center directors, supervisors, recreation superintendents, or such other officers or employees as it deems are needed. The recreation authority is authorized to develop a program of recreational activities and services designated to meet the various leisure time interests of all people. (Ga. L. 1923, p. 106, § 3; Code 1933, § 69-603; Ga. L. 1946, p. 152, § 3.)

JUDICIAL DECISIONS

Cited in City of Gainesville v. Pritchett, 129 Ga. App. 475, 199 S.E.2d 889 (1973).

OPINIONS OF THE ATTORNEY GENERAL

City may derive revenue from operation of recreational programs and may even show a profit from a particular recreational activity. 1965-66 Op. Att'y Gen. No. 66-85.

City recreation department may sponsor teenage dances and charge an admission fee to those wishing to attend the dances. 1965-66 Op. Att'y Gen. No. 66-85.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 181. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 20.

C.J.S. — 64 C.J.S., Municipal Corporations, § 1995 et seq.

ALR. — Liability of municipal corporation for injuries due to condition in park, 42 ALR 263; 99 ALR 686; 142 ALR 1340.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes, 37 ALR3d 712.

Public swimming pool as nuisance, 49 ALR3d 652.

36-64-3.1. Use of dam sites and adjacent land for producing hydroelectric power.

(a) As used in this Code section, the term "governing authority of any recreation system" shall mean the governing body of a municipality or county, a recreation board, or any other authority, board, or commission which is vested with the power to provide, establish, conduct, and maintain a supervised recreation system and facilities.

(b) The governing authority of any recreation system shall be empowered, for the purpose of producing hydroelectric power for ultimate sale to the public, to take all necessary or appropriate actions to permit the renovation, reconstruction, and operation of existing dam sites located on property which is owned by the governing authority, including land that has been dedicated for public recreational or park use, without regard to whether such public use has been previously abandoned.

(c) Without limiting the foregoing provisions of this Code section, the governing authority of any recreation system shall have the power, for the purposes specified in subsection (b) of this Code section, to grant or convey, and to grant an option to obtain, a leasehold interest, a fee simple title, or other property interest in any such dam site and in such immediately adjacent land as may be necessary to accommodate facilities for the generation of hydroelectric power, together with all easements, rights of way, and rights to flood adjacent lands as may be necessary or appropriate, to electric utilities or other entities organized for the purpose of generating or distributing electricity for public use.

(d) The governing authority of any recreation system also shall have the power, for the purposes specified in subsection (b) of this Code section, to enter into any contracts necessary or appropriate to determine the feasibility of renovating an existing dam for the generation of hydroelectric power; to enter into any contracts with electric utilities or other entities organized for the purpose of generating or distributing electricity for public use which are necessary or appropriate for the

construction, use, operation, and maintenance of a hydroelectric facility at an existing dam site located on property owned by the governing authority; and to take all actions necessary or appropriate to obtain, and to transfer its rights under, any governmental license or other approval or exemption required or desired for a hydroelectric project.

(e) All conveyances and other contracts, including those extending over a period of years, which are entered into by the governing authority of any recreation system for the purposes specified in subsection (b) of this Code section shall be binding upon such governing authority and its successors.

(f) Any net revenue derived by the governing authority of a recreation system from such conveyances and other contracts shall be used only for recreational purposes.

(g) This Code section shall apply to and control the activities of a governing authority of any recreation system in connection with the renovation, reconstruction, and operation of any dam site located on property owned by the governing authority, notwithstanding any provision to the contrary contained in this chapter or in Code Section 36-30-3 or in any other laws; provided, however, that nothing in this Code section shall be construed as impairing the obligation of any contract provision, whether by way of reversionary clause or otherwise. (Ga. L. 1981, p. 1020, § 1; Ga. L. 1982, p. 3, § 36.)

Cross references. — Dam safety, § 12-5-370 et seq. Authority of persons constructing or operating electric generating plants to acquire rights of way or other easements to run power lines, maintain dams, and do other things, § 22-3-20. Construction, operation of watershed projects, flood-control projects by counties, § 22-3-100 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Lease recommendation for hydroelectric power unauthorized. — Board of Natural Resources is not authorized by subsection (b) of O.C.G.A. § 36-64-3.1 to recommend by resolution to the State Properties Commission a lease for producing, on state owned lands which the Department of Natural Resources manages, hydroelectric power for use by the department and ultimate sale to the public. 1983 Op. Att'y Gen. No. 83-47.

36-64-4. Joint recreation systems.

Any two or more counties, any two or more municipalities, any county and municipality, any county or municipality, or combination thereof may jointly provide, establish, maintain, and conduct a recreation system and jointly acquire property for and establish and maintain playgrounds, recreation centers, parks, and other recreational facilities and activities. Any school board may join with any municipality, county, or any other school board in conducting and maintaining a recreation

system. (Ga. L. 1923, p. 106, § 5; Code 1933, § 69-605; Ga. L. 1946, p. 152, § 5; Ga. L. 1964, p. 319, § 1; Ga. L. 1971, p. 262, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Joint provision of recreation. — While county may not legally donate funds to assist a city in constructing a swimming pool, the county and city may jointly provide, establish, maintain, and conduct such system. 1952-53 Op. Att'y Gen. p. 289.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 192.

C.J.S. — 63 C.J.S., Municipal Corporations, § 1150 et seq.

36-64-5. Establishment of recreation board; powers and responsibilities; members; terms; officers; vacancies.

If the governing body of any county or municipality determines that the power to provide, establish, conduct, and maintain a recreation system should be exercised by a park or recreation board, such governing body, by resolution or ordinance, shall establish a recreation board in such municipality or county which shall possess all the powers and be subject to all the responsibilities of local authorities under this chapter. The board, when established, shall consist of a minimum of five persons and a maximum of nine persons, serving without pay, to be appointed by the mayor or presiding officer of the county or municipality. The terms of office of the members of the board shall be for five years or until their successors are appointed and qualified, except that the appointing authority, in making initial appointments or in filling vacancies, is authorized and directed to vary the initial terms of members or the terms of persons appointed to fill vacancies in such a manner that thereafter the term of at least one member shall expire annually. Immediately after its appointment, the board shall meet and organize by electing one of its members president and such other officers as may be necessary. Vacancies in the board occurring otherwise than by expiration of term shall be filled by the mayor or presiding officer of the governing body only for the unexpired term, except as otherwise provided in this chapter. (Ga. L. 1923, p. 106, § 4; Code 1933, § 69-604; Ga. L. 1946, p. 152, § 4; Ga. L. 1971, p. 262, § 1.)

JUDICIAL DECISIONS

Prohibition of dissolution of authority without paying creditors. — It would be unconscionable, perhaps even unconstitutional, for a governmental body to create a separate legal entity capable of incurring debts, to reap benefits from purchases made by the entity, and then to dissolve the entity with an express prohibition against paying any of the creditors, and therefore the trial court erred in

granting summary judgment for the city in suit by a creditor to collect a bill for recreational supplies allegedly purchased by a municipal recreation authority prior to the authority's dissolution. Got-It Hdwe. & Gifts, Inc. v. City of Ashburn, 155 Ga. App. 214, 270 S.E.2d 380 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 12.

36-64-6. Acceptance of gifts for recreation purposes.

A park or recreation board or other authority in which is vested the power to provide, establish, maintain, and conduct a recreation program may accept any grant or devise of real estate or any gift or bequest of money or other personal property or any donation, the principal or income of which is to be applied for either temporary or permanent use for playgrounds or recreation purposes. If the acceptance thereof for such purposes will subject the county or municipality to additional expense for improvements, maintenance, or renewal, the acceptance of any grant or devise of real estate shall be subject to the approval of the governing body of the county or municipality. Money received for such purposes, unless otherwise provided by the terms of the gift or bequest, shall be deposited with the treasurer of the county or municipality to the account of the recreation board or commission or other body having charge of such work or shall be deposited directly with the recreation board; it shall be withdrawn and paid out by such body in the same manner as money appropriated for recreation purposes. (Ga. L. 1923, p. 106, § 6; Code 1933, § 69-606; Ga. L. 1946, p. 152, § 6.)

Cross references. — Further provisions regarding devises and gifts of property to municipalities for parks or other public purposes, § 36-37-1. Acceptance of donations or gifts of property by municipal corporations generally, § 36-37-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 470, 471.

36-64-7. Issuance of bonds.

The governing body of any municipality or county, pursuant to law, may provide that the bonds of the municipality or county may be issued, in the manner provided by law for the issuance of bonds for other purposes, for the purpose of acquiring lands or buildings for parks, playgrounds, recreation centers, and other recreational purposes and for the equipment thereof. (Ga. L. 1923, p. 106, § 7; Code 1933, § 69-607; Ga. L. 1946, p. 152, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 549, 562. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 12. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 88, 89.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2122, 2123.

ALR. — Assignment and transfer of government bonds, 22 ALR 775.

36-64-8. Petition for recreation system; provision of system on governing authority's own motion; referendums on issue of special tax and millage increase.

(a) Whenever a petition signed by at least 10 percent of the qualified and registered voters in any municipality or county is filed in the office of the clerk of the municipality or county, requesting the governing body of the municipality or county to provide, establish, maintain, and conduct a supervised recreation system and to levy an annual tax on the taxable property within the municipality or county for the conduct and maintenance thereof, it shall be the duty of the governing body to appropriate funds for and to provide for the establishment, maintenance, and conduct of a supervised recreation system or, if the question of a special tax is raised by the petition, to cause the question of the establishment, maintenance, and conduct of such supervised recreation system to be submitted to the voters to be voted upon at the next general or special election of the municipality or county; provided, however, that such question shall not be voted upon at the next general or special election unless such petition has been filed at least 30 days prior to the date of such election.

(b) In addition to the method provided in subsection (a) of this Code section, the governing authority of any municipality or county, upon its own motion, may appropriate funds for and provide for the establishment, maintenance, and conduct of a supervised recreation system or, if a special tax is necessary, upon its own motion may cause the question of the establishment, maintenance, and conduct of such supervised recreation system to be submitted to the voters to be voted upon at the next general or special election of the municipality or county, provided such motion has been made at least 30 days prior to the date of such election.

(c) Nothing in this chapter shall permit the levying of a tax in excess of any limitation contained in a municipal charter or, with reference to a county, in excess of the authority set out by the Constitution and laws of this state; provided, however, that any municipality is authorized to levy a tax in excess of any limitation contained in its municipal charter if a referendum is held and a majority of the qualified voters of the municipality voting in such election vote in favor of the millage

increase. (Ga. L. 1923, p. 106, § 8; Code 1933, § 69-608; Ga. L. 1946, p. 152, § 8; Ga. L. 1953, p. 30, § 1; Ga. L. 1963, p. 553, § 1; Ga. L. 1964, p. 213, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Initiative and Referendum, §§ 1, 6, 7, 37 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 514, 572. 70C Am. Jur. 2d, Special or Local Assessments, § 231. 71 Am. Jur. 2d, State and Local Taxation, § 67.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2234 et seq.

36-64-9. Establishment of system with tax money following favorable vote.

Upon the adoption of the proposition at an election conducted pursuant to Code Section 36-64-8, the governing body of the municipality or county, by resolution or ordinance, shall provide for the establishment, maintenance, and conduct of the supervised recreation system as they may deem it advisable and practicable to provide and maintain out of the tax money thus voted. The governing body, by appropriate resolution or ordinance, may designate the board or commission to be vested with the powers, duties, and obligations necessary for the establishment, maintenance, and conduct of such recreation system, as provided in this chapter. (Ga. L. 1923, p. 106, § 9; Code 1933, § 69-609; Ga. L. 1946, p. 152, § 9.)

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Initiative and Referendum, § 49.

36-64-10. Levy and collection of recreation tax.

The governing body of any municipality or county or school district adopting the provisions of this chapter at an election shall thereafter annually levy and collect a tax sufficient to provide for an adequate recreation program for the area specified, of not less than the minimum nor more than the maximum amount set out in the petition for the election, which tax shall be designated as the "recreation tax" and shall be levied and collected in the same manner as the general tax of the municipality, county, or school district. (Ga. L. 1923, p. 106, § 10; Code 1933, § 69-610; Ga. L. 1946, p. 152, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 514. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds,

§§ 5, 6. 70C Am. Jur. 2d, Special or Local Assessments, §§ 25, 34. 71 Am. Jur. 2d, State and Local Taxation, §§ 48, 54.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2233 et seq., 2276, 2277, 2495.

36-64-11. Payment of costs and expenses of recreation system; control of recreation fund.

The cost and expense of the establishment, maintenance, and conduct of a supervised recreation system of parks, playgrounds, recreation centers, and other recreational facilities and activities shall be paid out of taxes or other money received for this purpose. The recreation board or commission or other authority in which is vested the power to provide, establish, conduct, and maintain a supervised recreation system and facilities shall have exclusive control of all moneys collected or donated to the credit of the "recreation fund." (Ga. L. 1923, p. 106, § 11; Code 1933, § 69-611; Ga. L. 1946, p. 152, § 11.)

JUDICIAL DECISIONS

Cited in Rabun County Recreation Bd. v. Jarrard, 150 Ga. App. 56, 256 S.E.2d 661 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 514.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2497, 2498.

36-64-12. Establishment, maintenance, and conduct of recreation system not mandatory.

Notwithstanding any other provision of this chapter, it shall not be mandatory that a municipality or county establish, maintain, or conduct a recreation system. (Ga. L. 1963, p. 553, § 2.)

JUDICIAL DECISIONS

Cited in Jonesboro Area Athletic Ass'n v. Dickson, 227 Ga. 513, 181 S.E.2d 852 (1971); Rabun County Recreation Bd. v. Jarrard, 150 Ga. App. 56, 256 S.E.2d 661 (1979).

36-64-13. Applicability of chapter generally.

This chapter shall apply to all counties and municipalities in this state. (Ga. L. 1923, p. 106, § 1; Code 1933, § 69-601; Ga. L. 1946, p. 152, § 1.)

JUDICIAL DECISIONS

Constitutionality. — This chapter does not impinge or offend the provisions of Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Wilson v. City Council, 165 Ga. 520, 141 S.E. 412 (1928) (see O.C.G.A. Ch. 64, T. 36).

RESEARCH REFERENCES

ALR. — Statutes relating to establishment or administration of parks, as encroachment on right of local self-government, 88 ALR 228.

36-64-14. Applicability of chapter to recreation and playground commissions, boards, and systems created by special Acts of General Assembly.

This chapter shall not apply to recreation or playground commissions, boards, or systems which are created by special Acts of the General Assembly. (Ga. L. 1923, p. 106, § 11a; Code 1933, § 69-612; Ga. L. 1946, p. 152, § 11A.)

36-64-15. Removal of minimum or maximum recreation tax by municipality or county.

(a) If a municipality or county has adopted the provisions of this chapter at an election, thereby establishing a minimum recreation tax, a maximum recreation tax, or a minimum and maximum recreation tax, then such minimum or maximum or both may be removed as provided in this Code section.

(b) In order to so remove the minimum or maximum or both, the governing body of the municipality or county shall adopt a resolution to that effect, subject to approval by a majority of the voters of the municipality or county at the next general or special election of the municipality or county which is held more than 45 days after the date of the adoption of the resolution by the governing body. Such resolution shall specify the ballot language to be used in presenting the question and the governing body shall provide a copy of the resolution to the appropriate election officials. If a majority of the voters voting on the question of removal vote in favor, the minimum or maximum or both shall be removed as presented to the voters.

(c) Where a minimum or maximum or both has or have been removed as authorized by this Code section, the amount of municipal or county funding for the recreation system of the municipality or county shall thereafter be determined by the governing body of the municipality or county in its discretion; and the municipal or county governing body shall assume budgetary control over the recreation fund and any

moneys therein. (Code 1981, § 36-64-15, enacted by Ga. L. 2008, p. 740, § 1/HB 1024.)

CHAPTER 65

IMMUNITY FROM ANTITRUST LIABILITY

Sec.
36-65-1. Statement of policy.
36-65-2. Immunity of local governments from antitrust liability.

Editor's notes. — This chapter and Code Sections 36-65-1 and 36-65-2 were originally enacted as Chapter 19 of this title and Code Sections 36-19-1 [repealed] and 36-19-2, respectively, by Ga. L. 1984, p. 1337, § 1. The present chapter and Code section designations were made by Ga. L. 1985, p. 149, § 36.

Law reviews. — For article, "Antitrust," see 44 Mercer L. Rev. 1047 (1993).

JUDICIAL DECISIONS

Immunity from federal antitrust liability. — City's anticompetitive operation of a waterworks is protected from federal antitrust liability by the state action immunity doctrine under Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943), and its progeny. McCallum v. City of Athens, 976 F.2d 649 (11th Cir. 1992).

36-65-1. Statement of policy.

It is declared by the General Assembly of Georgia that in the exercise of powers specifically granted to them by law, local governing authorities of cities and counties are acting pursuant to state policy. (Code 1981, § 36-19-1, enacted by Ga. L. 1984, p. 1337, § 1; Code 1981, § 36-65-1, as redesignated by Ga. L. 1985, p. 149, § 36.)

JUDICIAL DECISIONS

Cited in Pine Ridge Recycling, Inc. v. Butts County, 855 F. Supp. 1264 (M.D. Ga. 1994).

36-65-2. Immunity of local governments from antitrust liability.

This chapter is intended to articulate clearly and express affirmatively the policy of the State of Georgia that in the exercise of such powers, such local governing authorities shall be immune from antitrust liability to the same degree and extent as enjoyed by the State of Georgia. (Code 1981, § 36-19-2, enacted by Ga. L. 1984, p. 1337, § 1; Code 1981, § 36-65-2, as redesignated by Ga. L. 1985, p. 149, § 36.)

JUDICIAL DECISIONS

Garbage collection services contracts. — County's alleged anticompetitive conduct in enacting an ordinance authorizing the county to enter into a contract with a private enterprise for garbage collection was expressly contemplated by the Georgia Comprehensive Solid Waste Management Act, O.C.G.A. § 12-8-20 et seq., and, thus, the county was immune from state and federal antitrust laws. Strykr v. Long County Bd. of Comm'rs, 277 Ga. 624, 593 S.E.2d 348 (2004).

CHAPTER 66

ZONING PROCEDURES

Sec.
36-66-1. Short title.
36-66-2. Legislative purpose; local government zoning powers.
36-66-3. Definitions.
36-66-4. Hearings on proposed zoning decisions; notice of hearing; nongovernmental initiated actions; reconsideration of defeated actions; procedure on zoning for property annexed into municipality.
36-66-5. Adoption of hearing policies and procedures and standards for exercise of zoning power.
36-66-6. Investigations and recommendations of planning department regarding land near military installation.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, Chapter 66, as enacted by Ga. L. 1985, p, 117, § 1, was redesignated as Chapter 67.

Law reviews. — For article, "Judicial Review of Georgia Zoning: Cyclones and Doldrums in the Windmills of the Mind," see 2 Ga. St. U. L. Rev. 97 (1986). For article, "Iguanas, Toads and Toothbrushes: Land-use Regulation of Art as Signage," see 25 Ga. L. Rev. 437 (1991). For annual survey on law of real property, see 43 Mercer L. Rev. 353 (1991). For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

For note, "Constitutional Barriers to Statewide Land Use Regulation in Georgia: Do They Still Exist?," see 3 Ga. St. U. L. Rev. 249 (1987). For note on 1993 amendment of this chapter, see 10 Ga. St. U. L. Rev. 166 (1993). For note on using inclusionary zoning techniques to promote affordable housing, see 44 Emory L.J. 359 (1995).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Unreasonableness of Zoning Restriction, 8 POF2d 53.

Special Damages Sufficient to Give Standing to Enjoin Zoning Violation, 1 POF3d 495.

Vested Right in Continuation of Zoning, 13 POF2d 373.

Zoning — Hardship Necessary for Zoning Variance, 23 POF3d 563.

Zoning — Invalidity of Single-Family Zoning Ordinance, 24 POF3d 543.

Zoning — Circumstances Warranting Relief from Zoning Enforcement, 25 POF3d 541.

Zoning — Circumstances Warranting Expansion of a Nonconforming Use, 26 POF3d 467.

Zoning: Proof of Unreasonableness of Aesthetic Regulation, 29 POF3d 491.

Zoning: Proof of Wrongful Land Use Pursuant to Section 1983, 30 POF3d 503.

Zoning: Proof of Inverse Condemnation from Excessive Land Use Regulation, 31 POF3d 563.

Zoning: Proof of Unreasonableness of Interim Zoning and Building Moratoria, 32 POF3d 485.

Zoning: Proof of Bias or Conflict of Interest in Zoning Decision, 32 POF3d 531.

Zoning: Validity of Home Occupation Accessory Use of Residential Property, 33 POF3d 459.

Zoning — Challenge to the Imposition of Development Exactions, 36 POF3d 417.

Zoning Action Not in Accordance With a Comprehensive Plan, 37 POF3d 383.

Challenge to Rezoning as Illegal Spot Zoning, 39 POF3d 433.

Change in Character of Neighborhood

Necessary to Justify Rezoning, 41 POF3d 443.

Zoning: Circumstances Justifying Termination of Lawful Nonconforming Use, 44 POF3d 531.

Am. Jur. Trials. — Landowner's Right to Maintain Nonconforming Use Under Zoning Ordinance, 62 Am. Jur. Trials 1.

ALR. — Zoning: what constitutes "incidental" or "accessory" use of property zoned, and primarily used, for residential purposes, 54 ALR4th 1034.

Change in area or location of nonconforming use as violation of zoning ordinance, 56 ALR4th 769.

Zoning: what constitutes "incidental" or "accessory" use of property zoned, and primarily used, for business or commercial purposes, 60 ALR4th 907.

Addition of another activity to existing nonconforming use as violation of zoning ordinance, 61 ALR4th 724.

Change in volume, intensity, or means of performing nonconforming use as violation of zoning ordinance, 61 ALR4th 806.

Change in type of activity of nonconforming use as violation of zoning ordinance, 61 ALR4th 902.

Alteration, extension, reconstruction, or repair of nonconforming structure or structure devoted to nonconforming use as violation of zoning ordinance, 63 ALR4th 275.

Zoning regulation of intoxicating liquor as pre-empted by state law, 65 ALR4th 555.

Zoning: construction and effect of statute requiring that zoning application be treated as approved if not acted on within specified period of time, 66 ALR4th 1012.

Zoning: residential off-street parking requirements, 71 ALR4th 529.

Laches as defense in suit by governmental entity to enjoin zoning violation, 73 ALR4th 870.

Validity of zoning laws setting minimum lot size requirements, 1 ALR5th 622.

Construction and application of zoning laws setting minimum lot size requirements, 2 ALR5th 553.

Activities in preparation for building as establishing valid nonconforming use or vested right to engage in construction for intended use, 38 ALR5th 737.

36-66-1. Short title.

This chapter shall be known and may be cited as "The Zoning Procedures Law." (Code 1981, § 36-66-1, enacted by Ga. L. 1985, p. 1139, § 1.)

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001). For article, "Local Government Litigation: Some Pivotal Principles," see 55 Mercer L. Rev. 1 (2003). For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Zoning ordinance properly enacted. — Evidence was sufficient to establish that the enactment of a county's zoning ordinance complied with the Georgia Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., when the board of commissioners adopted the zoning ordinance after the ordinance was read, a public meeting was held, changes to the proposed ordinance were made, and another public hearing was held at which the zoning map was available, and amendments to the zoning ordinance were approved pursuant to the zoning administrator's recommendations, a public meeting was held on the amendments, and the board then adopted the amendments without change. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344 (2004).

Superseded portions of ordinances

need not be kept. — There is nothing in the Georgia Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., or the cases interpreting that law, that conditions validity of a zoning ordinance on the retention of superseded portions of the ordinance. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344 (2004).

Claim was time-barred. — Owner's failure to appeal the rezoning of a neighbor's property precluded the owner from attacking the rezoning decision under Spalding County, Ga., Unified Development Ordinance § 418 and O.C.G.A. § 5-3-20; a claim that Spalding County, Ga., Unified Development Ordinance § 414 did not comply with the Georgia Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., was also time-barred as any challenge to the rezoning had to be raised within 30 days. Hollberg v. Spalding County, 281 Ga. App. 768, 637 S.E.2d 163 (2006).

36-66-2. Legislative purpose; local government zoning powers.

(a) While recognizing and confirming the authority of local governments to exercise zoning power within their respective territorial boundaries, it is the intention of this chapter to establish as state policy minimum procedures governing the exercise of that power. The purpose of these minimum procedures is to assure that due process is afforded to the general public when local governments regulate the uses of property through the exercise of the zoning power. Nothing in this chapter shall be construed to invalidate any zoning decision made by a local government prior to January 1, 1986, or to require a local government to exercise its zoning power.

(b) Consistent with the minimum procedures required by this chapter, local governments may:

(1) Provide by ordinance or resolution for such administrative officers, bodies, or agencies as may be expedient for the efficient exercise of their zoning powers; and

(2) Provide by ordinance or resolution for procedures and requirements in addition to or supplemental to those required by this chapter. (Code 1981, § 36-66-2, enacted by Ga. L. 1985, p. 1139, § 1.)

JUDICIAL DECISIONS

Procedural requirements of this chapter are mandatory. — County's failure to comply with the notice provisions of O.C.G.A. § 36-66-4(a) invalidated the subject zoning action. McClure v. Davidson, 258 Ga. 706, 373 S.E.2d 617 (1988).

County's failure to comply with the mandatory language of O.C.G.A. Ch. 66, T. 36 in enacting a zoning ordinance rendered the ordinance void. Tilley Properties, Inc. v. Bartow County, 261 Ga. 153, 401 S.E.2d 527 (1991).

No requirement that zoning power be exercised. — While the Georgia Public Service Commission (PSC) had the authority to regulate the placement of electrical substations, no requirement existed that every complex construction project be subject to zoning-like restrictions as an agency was not required to exercise the agency's zoning power under O.C.G.A. § 36-66-2(a); the broad statutory delegations of authority to the PSC did not specifically mention siting and did not provide sufficient objective standards

to control the PSC's discretion so a trial court improperly directed the PSC to consider the propriety of a power company's construction of a substation and apply specific standards to the case. Ga. PSC v. Turnage, 284 Ga. 610, 669 S.E.2d 138 (2008).

Appeals. — Without express statutory language, a local government does not have the authority to create direct appeals of rezoning decisions. Walton County v. Scenic Hills Estates, Inc., 261 Ga. 94, 401 S.E.2d 513 (1991).

Cited in Kingsley v. Fla. Rock Indus., 259 Ga. App. 207, 575 S.E.2d 921 (2002); Buckner v. Douglas County, 273 Ga. App. 765, 615 S.E.2d 850 (2005); Century Ctr. at Braselton, LLC v. Town of Braselton, 285 Ga. 380, 677 S.E.2d 106 (2009).

36-66-3. Definitions.

As used in this chapter, the term:

(1) "Local government" means any county or municipality which exercises zoning power within its territorial boundaries.

(2) "Territorial boundaries" means, in the case of counties, the unincorporated areas thereof and any area defined in paragraph (5.1) of Code Section 36-70-2, and, in the case of municipalities, the area lying within the corporate limits thereof except any area defined in paragraph (5.1) of Code Section 36-70-2.

(3) "Zoning" means the power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.

(4) "Zoning decision" means final legislative action by a local government which results in:

(A) The adoption of a zoning ordinance;

(B) The adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;

(C) The adoption of an amendment to a zoning ordinance which rezones property from one zoning classification to another;

(D) The adoption of an amendment to a zoning ordinance by a municipal local government which zones property to be annexed into the municipality; or

(E) The grant of a permit relating to a special use of property.

(5) "Zoning ordinance" means an ordinance or resolution of a local government establishing procedures and zones or districts within its respective territorial boundaries which regulate the uses and development standards of property within such zones or districts. The

term also includes the zoning map adopted in conjunction with a zoning ordinance which shows the zones and districts and zoning classifications of property therein. (Code 1981, § 36-66-3, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 1993, p. 806, § 1; Ga. L. 1996, p. 1009, § 1; Ga. L. 1997, p. 1567, § 2; Ga. L. 1998, p. 1391, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, the definitions were alphabetized.

Law reviews. — For review of 1998 legislation relating to local government, see 15 Ga. St. U. L. Rev. 194 (1998).

JUDICIAL DECISIONS

"Zoning decision" construed. — Both passage and rescission of a text amendment change the text of the zoning ordinance. Both actions fit squarely within the statutory definition of a "zoning decision." Atlanta Bio-Med, Inc. v. DeKalb County, 261 Ga. 594, 408 S.E.2d 100 (1991).

Clause in a lease agreement between a city and the city's solid waste treatment provider which might require a future amendment to a zoning ordinance did not constitute a zoning decision. Grove v. Sugar Hill Inv. Assocs., 219 Ga. App. 781, 466 S.E.2d 901 (1995).

Since a real estate developer had neither concluded the purchase of property or made substantial expenditures in reliance upon the probable issuance of a building permit until after the county amended its zoning ordinance to the detriment of the developer, the developer did not acquire a vested right to develop the property in question in conformity with the old ordinance; the county board of commissioner's letter to the developer amounted to an agreement to amend the ordinance and, thus, invoked the notice and hearing requirements under Georgia's Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. Buckner v. Douglas County, 273 Ga. App. 765, 615 S.E.2d 850 (2005).

Zoning map properly incorporated by reference. — County zoning ordinance properly incorporated by reference an official zoning map as the board of commissioners had a zoning map before the commissioners when the commissioners considered the ordinance, the zoning map was in existence when a limited liability limited partnership (LLLP) bought the property and that map was kept in the zoning administrator's office, the new zoning administrator's uncertainty about which of two maps was the official map did not render the entire zoning ordinance invalid, and it was clear that the LLLP's land was not zoned for a landfill. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344 (2004).

Sign ordinances were subject to the Zoning Procedures Law (ZPL), O.C.G.A. § 36-66-1 et seq., when the ordinances were drafted in such a manner as to regulate the uses and development standards of property, i.e., signs, by means of zones or districts; if the city's sign ordinance was read as a whole, it was clear that the ordinance divided the city into districts and regulated the uses of signs relative to the districts in which the signs were located and, accordingly, was subject to the ZPL. City of Walnut Grove v. Questco, Ltd., 275 Ga. 266, 564 S.E.2d 445 (2002).

Adult ordinance was not a "zoning ordinance" even though the ordinance placed certain limitations on locations available to an adult business and established certain minimum lot sizes and road frontages; rather than regulating general uses of land, the adult ordinance regulated a particular type of activity — adult entertainment; as such, it was not a zoning ordinance and was not subject to the hearing requirements established under the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. Artistic Entm't, Inc. v. City of Warner Robins, 331 F.3d 1196 (11th Cir. 2003), cert. denied, 541 U.S. 988, 124 S. Ct. 2017, 158 L. Ed. 2d 491 (2004).

Flood ordinances in question did not classify property into separate districts,

instead, the ordinances applied to all property in the county subject to a specified physical phenomenon, specifically, periodic flooding; thus, the ordinances were not zoning ordinances subject to the notice requirements of the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., and were not invalid for failure to comply with that law. Union County v. CGP, Inc., 277 Ga. 349, 589 S.E.2d 240 (2003).

Overlay zoning ordinances. — With regard to the landowners' action against a town and the town's officials alleging the unconstitutionality and invalidity of an overlay zoning district, the trial court erred by denying the landowners' motion for partial summary judgment with regard to the landowners' claim that the town did not have any legal authority to impose the requirements of the overlay zoning ordinance for right-of-way improvements on the state route abutting the property since the property at issue was outside the territorial boundaries of the town. Therefore, the requirements of the overlay zoning ordinance were invalid as to the property since the town had no zoning authority over the property. Century Ctr. at Braselton, LLC v. Town of Braselton, 285 Ga. 380, 677 S.E.2d 106 (2009).

Establishment of copy of zoning law. — Application of O.C.G.A. § 24-8-1 in a county's action to establish a copy of a zoning ordinance that had been lost did not violate the Zoning Procedures Law (ZPL), O.C.G.A. § 36-66-1 et seq., because the trial court's decree did not have the effect of either adopting or amending any zoning ordinance; because it did not constitute final legislative action by a local government resulting in such adoption or amendment, the decree was not a "zoning decision" to which the ZPL applied, O.C.G.A. § 36-66-3(4). East Georgia Land & Dev. Co. v. Baker, 286 Ga. 551, 690 S.E.2d 145 (2010).

Not a zoning ordinance. — Trial court did not err in determining that the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., did not apply to City of Forest Park, Ga., Ordinance § 9-8-45 because the ordinance regulated businesses selling merchandise in a certain manner, and that the ordinance regulated businesses and included a distance restriction in its regulation of merchandise display did not render it a "zoning ordinance;" the passage of the ordinance was not a "zoning decision" as defined by O.C.G.A. § 36-66-3(4), and the ordinance was not a "zoning ordinance" as defined by § 36-66-3(5). Braley v. City of Forest Park, 286 Ga. 760, 692 S.E.2d 595 (2010).

Notice requirement in seeking conditional use permit. — As a county's notice of the public hearing on a neighbor's request for a conditional use permit failed to comply with O.C.G.A. § 36-66-4(a) because the notice was published 46, not 45, days before the hearing, the county's approval of the neighbor's request was invalid. C & H Dev., LLC v. Franklin County, 294 Ga. App. 792, 670 S.E.2d 491 (2008).

Cited in Fairfax MK, Inc. v. City of Clarkston, 274 Ga. 520, 555 S.E.2d 722 (2001); Kingsley v. Fla. Rock Indus., 259 Ga. App. 207, 575 S.E.2d 921 (2002).

36-66-4. Hearings on proposed zoning decisions; notice of hearing; nongovernmental initiated actions; reconsideration of defeated actions; procedure on zoning for property annexed into municipality.

(a) A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

(b) If a zoning decision of a local government is for the rezoning of property and the rezoning is initiated by a party other than the local government, then:

(1) The notice, in addition to the requirements of subsection (a) of this Code section, shall include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property; and

(2) A sign containing information required by local ordinance or resolution shall be placed in a conspicuous location on the property not less than 15 days prior to the date of the hearing.

(c) If the zoning decision of a local government is for the rezoning of property and the amendment to the zoning ordinance to accomplish the rezoning is defeated by the local government, then the same property may not again be considered for rezoning until the expiration of at least six months immediately following the defeat of the rezoning by the local government.

(d) If the zoning is for property to be annexed into a municipality, then:

(1) Such municipal local government shall complete the procedures required by this chapter for such zoning, except for the final vote of the municipal governing authority, prior to adoption of the annexation ordinance or resolution or the effective date of any local Act but no sooner than the date the notice of the proposed annexation is provided to the governing authority of the county as required under Code Section 36-36-6;

(2) The hearing required by subsection (a) of this Code section shall be conducted prior to the annexation of the subject property into the municipality;

(3) In addition to the other notice requirements of this Code section, the municipality shall cause to be published within a newspaper of general circulation within the territorial boundaries of the county wherein the property to be annexed is located a notice of the hearing as required under the provisions of subsection (a) or (b), as applicable, of this Code section and shall place a sign on the property when required by subsection (b) of this Code section; and

(4) The zoning classification approved by the municipality following the hearing required by this Code section shall become effective on the later of:

(A) The date the zoning is approved by the municipality;

(B) The date that the annexation becomes effective pursuant to Code Section 36-36-2; or

(C) Where a county has interposed an objection pursuant to Code Section 36-36-11, the date provided for in paragraph (8) of subsection (c) of said Code section.

(e) A qualified municipality into which property has been annexed may provide, by the adoption of a zoning ordinance, that all annexed property shall be zoned by the municipality, without further action, for the same use for which that property was zoned immediately prior to such annexation. A qualified county which includes property which has been deannexed by a municipality may provide, by the adoption of a zoning ordinance, that all deannexed property shall be zoned by the county, without further action, for the same use for which that property was zoned immediately prior to such deannexation. A municipality shall be a qualified municipality only if the municipality and the county in which is located the property annexed into such municipality have a common zoning ordinance with respect to zoning classifications. A county shall be a qualified county only if that county and the municipality in which was located the property deannexed have a common zoning ordinance with respect to zoning classifications. A zoning ordinance authorized by this subsection shall be adopted in compliance with the other provisions of this chapter. The operation of such ordinance to zone property which is annexed or deannexed shall not require any further action by the adopting municipality, adopting county, or owner of the property annexed or deannexed. Property which is zoned pursuant to this subsection may have such zoning classification changed upon compliance with the other provisions of this chapter.

(f) When a proposed zoning decision relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency, a public hearing shall be held on the proposed action. Such public hearing shall be held at least six months and not more than nine months prior to the date of final action on the zoning decision. The hearing required by this subsection shall be in addition to any hearing required under subsection (a) of this Code section. The local government shall give notice of such hearing by:

(1) Posting notice on the affected premises in the manner prescribed by subsection (b) of this Code section; and

(2) Publishing in a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing at least 15 days and not more than 45 days prior to the date of the hearing.

Both the posted notice and the published notice shall include a prominent statement that the proposed zoning decision relates to or will allow the location or relocation of a halfway house, drug rehabili-

tation center, or other facility for treatment of drug dependency. The published notice shall be at least six column inches in size and shall not be located in the classified advertising section of the newspaper. (Code 1981, § 36-66-4, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 1996, p. 1009, § 2; Ga. L. 1998, p. 856, § 3; Ga. L. 1998, p. 1392, § 1; Ga. L. 2004, p. 69, § 19; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "subsection (c)" for "subsection (b)" in subparagraph (d)(4)(C), and revised punctuation in the introductory paragraph of subsection (e).

Editor's notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews. — For article surveying real property law in 1984-1985, see 37 Mercer L. Rev. 343 (1985). For article on 2004 amendment of this Code section, see 21 Ga. St. U. L. Rev. 226 (2004). For annual survey on zoning and land use law, see 61 Mercer L. Rev. 427 (2009).

JUDICIAL DECISIONS

Subsection (b) mandatory for text amendment of general application. — Procedures described in subsection (b) of O.C.G.A. § 36-66-4 must be followed when passing or rescinding a text amendment of general application. Atlanta Bio-Med, Inc. v. DeKalb County, 261 Ga. 594, 408 S.E.2d 100 (1991).

What constitutes "rezoning decision." — Text amendment having general application is not a "rezoning decision" for purposes of the procedures required under subsection (b) of O.C.G.A. § 36-66-4. Atlanta Bio-Med, Inc. v. DeKalb County, 261 Ga. 594, 408 S.E.2d 100 (1991).

Although O.C.G.A. § 36-66-4 requires only one hearing during the continuous course of a zoning matter before the local government, when a court found a first zoning decision unconstitutional and remanded the matter with direction to rezone, the zoning authority was required to hold a hearing. City of Cumming v. Realty Dev. Corp., 268 Ga. 461, 491 S.E.2d 60 (1997).

Adult ordinance was not a "zoning ordinance" even though the ordinance placed certain limitations on locations available to an adult business and established certain minimum lot sizes and road frontages; rather than regulating general uses of land, the adult ordinance regulated a particular type of activity — adult entertainment; as such, it was not a zoning ordinance and was not subject to the hearing requirements established under the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. Artistic Entm't, Inc. v. City of Warner Robins, 331 F.3d 1196 (11th Cir. 2003), cert. denied, 541 U.S. 988, 124 S. Ct. 2017, 158 L. Ed. 2d 491 (2004).

Notice. — County's failure to comply with the notice provisions of subsection (a) of O.C.G.A. § 36-66-4 invalidated the subject zoning action. McClure v. Davidson, 258 Ga. 706, 373 S.E.2d 617 (1988).

Since a real estate developer had neither concluded the purchase of property or made substantial expenditures in reliance upon the probable issuance of a building permit until after the county amended the county's zoning ordinance to the detriment of the developer, the developer did not acquire a vested right to develop the property in question in conformity with the old ordinance; the county board of commissioner's letter to the developer amounted to an agreement to amend the ordinance and, thus, invoked the notice and hearing requirements under Georgia's Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. Buckner v. Douglas County, 273 Ga. App. 765, 615 S.E.2d 850 (2005).

As a county's notice of the public hearing on a neighbor's request for a conditional use permit failed to comply with

O.C.G.A. § 36-66-4(a) because the notice was published 46, not 45, days before the hearing, the county's approval of the neighbor's request was invalid. C & H Dev., LLC v. Franklin County, 294 Ga. App. 792, 670 S.E.2d 491 (2008).

Annexation voided when procedures not followed. — Defendants attempt to annex certain properties into the corporate limits of the city and establish a new zoning district was voided because the procedural requirements of O.C.G.A § 36-36-21 and subsections (a) and (b) of O.C.G.A. § 36-66-4 were not met. City of Byron v. Betancourt, 242 Ga. App. 71, 528 S.E.2d 841 (2000).

Applicability to new permitted use. — Procedures described in subsection (b) of O.C.G.A. §§ 36-66-4 and 36-67-5 (now repealed) do not apply to the enactment of a zoning ordinance text amendment that allows a new permitted use. Atlanta Bio-Med, Inc. v. DeKalb County, 261 Ga. 594, 408 S.E.2d 100 (1991).

Zoning map properly incorporated by reference. — County zoning ordinance properly incorporated by reference an official zoning map as the board of commissioners had a zoning map before the commissioners when the commissioners considered the ordinance, the zoning map was in existence when a limited liability limited partnership (LLLP) bought the property and that map was kept in the zoning administrator's office, the new zoning administrator's uncertainty about which of two maps was the official map did not render the entire zoning ordinance invalid, and it was clear that the LLLP's land was not zoned for a landfill. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344 (2004).

Cited in City of Roswell v. Outdoor Sys., 274 Ga. 130, 549 S.E.2d 90 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Reconsideration after tie vote. — Tie vote on consideration of a zoning proposal by a county board was not a "defeat" of the proposal so as to bar the proposal's reconsideration within six months. 1996 Op. Att'y Gen. No. U96-16.

36-66-5. Adoption of hearing policies and procedures and standards for exercise of zoning power.

(a) Local governments shall adopt policies and procedures which govern calling and conducting hearings required by Code Section 36-66-4, and printed copies of such policies and procedures shall be available for distribution to the general public. Such policies and procedures shall specify a minimum time period at hearings on proposed zoning decisions for presentation of data, evidence, and opinion by proponents of each zoning decision and an equal minimum time period for presentation by opponents of each proposed zoning decision, such minimum time period to be no less than ten minutes per side.

(b) In addition to policies and procedures required by subsection (a) of this Code section, each local government shall adopt standards governing the exercise of the zoning power, and such standards may include any factors which the local government finds relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property. Such standards shall be printed and copies thereof shall be available for distribution to the general public.

(c) The policies and procedures required by subsection (a) of this Code section and the adoption of standards required by subsection (b) of this Code section may be included in and adopted as part of the zoning ordinance. Prior to the adoption of any zoning ordinance enacted on or after January 1, 1986, a local government shall conduct a public hearing on a proposed action which may be advertised and held concurrent with the hearing required by subsection (a) of Code Section 36-66-4 for the adoption of a zoning ordinance. The provisions of subsection (a) of Code Section 36-66-4 relating to notices of public hearings for the purposes of that subsection shall also apply to public hearings required by this subsection. (Code 1981, § 36-66-5, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 1993, p. 806, § 2; Ga. L. 1996, p. 317, § 1.)

Law reviews. — For comment, "Judicial Review of Zoning Ordinances in Georgia: The Court's Role in Land Use Planning," see 41 Mercer L. Rev. 1469 (1990).

JUDICIAL DECISIONS

Cited in Pinnell v. Kight, 245 Ga. App. 299, 537 S.E.2d 170 (2000).

36-66-6. Investigations and recommendations of planning department regarding land near military installation.

(a) In any local government which has established a planning department or other similar agency charged with the duty of reviewing zoning proposals, such planning department or other agency shall with respect to each proposed zoning decision involving land that is adjacent to or within 3,000 feet of any military base or military installation or within the 3,000 foot Clear Zone and Accident Prevention Zones Numbers I and II as prescribed in the definition of an Air Installation Compatible Use Zone of a military airport investigate and make a recommendation with respect to each of the matters enumerated in subsection (b) of this Code section, in addition to any other duties with which the planning department or agency is charged by the local government. The planning department or other agency shall request from the commander of such military base, military installation, or military airport a written recommendation and supporting facts relating to the use of the land being considered in the proposed zoning decision at least 30 days prior to the hearing required by subsection (a) of Code Section 36-66-4. If the base commander does not submit a response to such request by the date of the public hearing, there shall be a presumption that the proposed zoning decision will not have any adverse effect relative to the matters specified in subsection (b) of this Code section. Any such information provided shall become a part of the public record.

(b) The matters with which the planning department or agency shall be required to make such investigation and recommendation shall be:

(1) Whether the zoning proposal will permit a use that is suitable in view of the use of adjacent or nearby property within 3,000 feet of a military base, military installation, or military airport;

(2) Whether the zoning proposal will adversely affect the existing use or usability of nearby property within 3,000 feet of a military base, military installation, or military airport;

(3) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;

(4) Whether the zoning proposal will result in a use which will or could cause a safety concern with respect to excessive or burdensome use of existing streets, transportation facilities, utilities, or schools due to the use of nearby property as a military base, military installation, or military airport;

(5) If the local government has an adopted land use plan, whether the zoning proposal is in conformity with the policy and intent of the land use plan; and

(6) Whether there are other existing or changing conditions affecting the use of the nearby property as a military base, military installation, or military airport which give supporting grounds for either approval or disapproval of the zoning proposal. (Code 1981, § 36-66-6, enacted by Ga. L. 2003, p. 581, § 1.)

CHAPTER 66A

TRANSFER OF DEVELOPMENT RIGHTS

Sec.
36-66A-1. Definitions.
36-66A-2. Procedures, methods, and standards for transfer of development rights.

Law reviews. — For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

36-66A-1. Definitions.

As used in this chapter, the term:

(1) "Development rights" means the development that would be allowed on the sending property under any comprehensive or specific plan or local zoning ordinance of a municipality or county in effect on the date the municipality or county adopts an ordinance pursuant to this chapter. Development rights may be calculated and allocated in accordance with factors including dwelling units, area, floor area, floor area ratio, height limitations, traffic generation, or any other criteria that will quantify a value for the development rights in a manner that will carry out the objectives of this Code section.

(2) "Person" means any natural person, corporation, partnership, trust, foundation, nonprofit agency, or other legal entity.

(3) "Receiving area" means an area identified by an ordinance as an area authorized to receive development rights transferred from a sending area.

(4) "Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property without substantial adverse environmental, economic, or social impact to the receiving property or to neighboring property.

(5) "Sending area" means an area identified by an ordinance as an area from which development rights are authorized to be transferred to a receiving area.

(6) "Sending property" means a lot or parcel with special characteristics, including farm land; woodland; desert land; mountain land; a flood plain; natural habitats; wetlands; ground-water recharge

area; marsh hammocks; recreation areas or parkland, including golf course areas; or land that has unique esthetic, architectural, or historic value that a municipality or county desires to protect from future development.

(7) "Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

(8) "Transfer ratio" means the ratio of the number of development rights that may be allocated to and transferred from a lot or parcel in a sending area to the number of development credits that may be allocated to and used upon a lot or parcel in a receiving area. (Code 1981, § 36-66A-1, enacted by Ga. L. 1998, p. 1678, § 1; Ga. L. 2001, p. 1219, § 2; Ga. L. 2003, p. 859, § 1; Ga. L. 2008, p. 1029, § 1/HB 1160; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation and substituted "esthetic" for "aesthetic" in paragraph (6).

Editor's notes. — Ga. L. 2008, p. 1029, § 3/HB 1160, not codified by the General Assembly, provides that the amendment to this Code section shall apply to transfers of development rights executed on or after July 1, 2008.

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 192 (2003).

36-66A-2. Procedures, methods, and standards for transfer of development rights.

(a) Pursuant to the provisions of this Code section, the governing body of any municipality or county by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction.

(b) Any proposed transfer of development rights shall be subject to the approval and consent of the property owners of both the sending and receiving property.

(c) Prior to any transfer of development rights, a municipality or county shall adopt an ordinance providing for:

(1) The issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property. These instruments shall be executed by the affected property owners and lienholders and recorded in the county superior court clerk's office and in a separate registry maintained by the municipal or county governing authority;

(2) The preservation of the character of the sending property and assurance that the prohibitions against the use and development of

the sending property shall bind the landowner and every successor in interest to the landowner;

(3) The severance of transferable development rights from the sending property and the delayed transfer of development rights to a receiving property, which may include the transfer of development rights in accordance with any transfer ratio established by the local government for sending areas, receiving areas, or both;

(4) The purchase, sale, exchange, or other conveyance of transferable development rights prior to the rights being affixed to a receiving property;

(5) A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;

(6) The right of a municipality or county to purchase development rights and to hold them for conservation purposes or resale;

(7) The right of a person to purchase development rights and to hold them for conservation purposes or resale;

(8) Development rights made transferable pursuant to this Code section shall be interests in real property and shall be considered as such for purposes of conveyancing and taxation. Once a deed of transferable development rights created pursuant to this Code section has been sold, conveyed, or otherwise transferred by the owner of the parcel from which the development rights were derived, the transfer of development rights shall vest in the grantee and become freely alienable. For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is registered as a distinct interest in real property with the appropriate tax assessor or the transferable development right is used at a receiving property and becomes appurtenant thereto;

(9) A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties; and

(10) Such other provisions as the municipality or county deems necessary to aid in the implementation of the provisions of this chapter.

(d)(1) Prior to the enactment of an ordinance as provided in subsection (c) of this Code section, the local governing authority shall provide for a hearing on the proposed ordinance. At least 15 but not more than 45 days prior to the date of the hearing, the local governing authority shall cause to be published in a newspaper of general

circulation within the territorial boundaries of the political subdivision a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

(2) Prior to any changes in an area designated in an ordinance as a sending or receiving area, the local governing authority shall provide for notice and a hearing as provided in paragraph (1) of this subsection.

(e) Proposed transfers of development rights shall become effective upon the recording of the conveyance with the appropriate deed-recording authorities and the filing of a certified copy of such recording with the local governing authority of each political subdivision in which a sending or receiving area is located in whole or in part.

(f) Municipalities and counties which are jointly affected by development are authorized to enter into intergovernmental agreements for the purpose of enacting interdependent ordinances providing for the transfer of development rights between or among such jurisdictions, provided that such agreements otherwise comply with applicable laws. Any ordinances enacted pursuant to this subsection may provide for additional notice and hearing and signage requirements applicable to properties within the sending and receiving areas in each participating political subdivision. (Code 1981, § 36-66A-2, enacted by Ga. L. 1998, p. 1678, § 1; Ga. L. 2001, p. 1219, § 3; Ga. L. 2003, p. 859, § 1; Ga. L. 2008, p. 1029, § 2/HB 1160; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in subsection (f).

Editor's notes. — Ga. L. 2008, p. 1029, § 3/HB 1160, not codified by the General Assembly, provides that the amendment to this Code section shall apply to transfers of development rights executed on or after July 1, 2008.

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 192 (2003).

CHAPTER 66B

ADVANCED BROADBAND COLLOCATION

Sec.
36-66B-1. Short title.
36-66B-2. Legislative findings and intent.
Sec.
36-66B-3. Definitions.
36-66B-4. Streamlined processing.

Effective date. — This chapter became effective May 24, 2010.

36-66B-1. Short title.

This chapter shall be known and may be cited as the "Advanced Broadband Collocation Act." (Code 1981, § 36-66B-1, enacted by Ga. L. 2010, p. 328, § 1/SB 432.)

36-66B-2. Legislative findings and intent.

(a) The General Assembly finds that the enactment of this chapter is necessary to:

(1) Ensure the safe and efficient integration of facilities necessary for the provision of broadband and other advanced wireless communication services throughout this state;

(2) Ensure the ready availability of reliable wireless communication services to the public to support personal communications, economic development, and the general welfare; and

(3) Encourage where feasible the modification or collocation of wireless facilities on existing wireless support structures over the construction of new wireless support structures in the deployment or expansion of commercial wireless networks.

(b) While recognizing and confirming the purview of local governments to exercise zoning, land use, and permitting authority within their territorial boundaries with regard to the location, construction, and modification of wireless communication facilities, it is the intent of this chapter to establish procedural standards for the exercise of such authority so as to streamline and facilitate the modification of such facilities, including the placement of new or additional wireless facilities on existing wireless support structures. It is not the intent of this chapter to limit or preempt the scope of a local government's review of zoning, land use, or permitting applications for the siting of wireless facilities or wireless support structures or to require a local government to exercise its zoning power. (Code 1981, § 36-66B-2, enacted by Ga. L. 2010, p. 328, § 1/SB 432.)

36-66B-3. Definitions.

As used in this chapter, the term:

(1) "Accessory equipment" means any equipment serving or being used in conjunction with a wireless facility or wireless support structure and includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, and storage sheds, shelters, or similar structures.

(2) "Antenna" means communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communication services.

(3) "Application" means a formal request submitted to the local governing authority to construct or modify a wireless support structure or a wireless facility. An application shall be deemed complete when all documents, information, and fees specifically enumerated in the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, modification, or operation of wireless facilities are submitted by the applicant to the authority.

(4) "Collocation" means the placement or installation of new wireless facilities on previously approved and constructed wireless support structures, including monopoles and towers, both self-supporting and guyed, in a manner that negates the need to construct a new freestanding wireless support structure. Such term includes the placement of accessory equipment within an existing equipment compound.

(5) "Equipment compound" means an area surrounding or adjacent to the base of a wireless support structure within which accessory equipment is located.

(6) "Local governing authority" means a municipality or county that has adopted land use or zoning regulations for all or the majority of land uses within its jurisdiction or has adopted separate regulations pertaining to the location, construction, modification, or operation of wireless facilities.

(7) "Modification" or "modify" means the improvement, upgrade, expansion, or replacement of existing wireless facilities on an existing wireless support structure or within an existing equipment compound, provided such improvement, upgrade, expansion, or replacement does not increase the height of the wireless support structure or increase the dimensions of the equipment compound.

(8) "Wireless facility" means the set of equipment and network components, exclusive of the underlying wireless support structure, including antennas, transmitters, receivers, base stations, power

supplies, cabling, and accessory equipment, used to provide wireless data and telecommunication services.

(9) "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing or alternative structure designed to support or capable of supporting wireless facilities. Such term shall not include any electrical utility pole or tower used for the distribution or transmission of electrical service. (Code 1981, § 36-66B-3, enacted by Ga. L. 2010, p. 328, § 1/SB 432.)

36-66B-4. Streamlined processing.

(a) Applications for collocation or modification of a wireless facility entitled to streamlined processing under this Code section shall be reviewed for conformance with applicable site plan and building permit requirements, including zoning and land use conformity, but shall not otherwise be subject to the issuance of additional zoning, land use, or special use permit approvals beyond the initial zoning, land use, or special permit approvals issued for such wireless support structure or wireless facility. The intent of this Code section is to allow previously approved wireless support structures and wireless facilities to be modified or accept collocations without additional zoning or land use review beyond that which is typically required by the local governing authority for the issuance of building or electrical permits.

(b) The streamlined process set forth in subsection (a) of this Code section shall apply to applications for all modifications and to applications for all proposed collocations that meet the following requirements:

(1) The proposed collocation shall not increase the overall height or width of the wireless support structure to which the wireless facilities are to be attached;

(2) The proposed collocation shall not increase the dimensions of the equipment compound approved by the local governing authority;

(3) The proposed collocation shall comply with applicable conditions of approval, if any, applied to the initial wireless facilities and wireless support structure, as well as any subsequently adopted amendments to such conditions of approval; and

(4) The proposed collocation shall not exceed the applicable weight limits for the wireless support structure, as demonstrated by a letter from a structural engineer licensed to practice in this state.

(c) A local governing authority's review of an application to modify or collocate wireless facilities on an existing wireless support structure shall not include an evaluation of the technical, business, or service

characteristics of such proposed wireless facilities. A local governing authority shall not require an applicant to submit radio frequency analyses or any other documentation intended to demonstrate the proposed service characteristics of the proposed wireless facilities, to illustrate the need for such wireless facilities, or to justify the business decision to collocate such wireless facilities; provided, however, that the local governing authority may require the applicant to provide a letter from a radio frequency engineer certifying the applicant's proposed wireless facilities will not interfere with emergency communications.

(d) Within 90 calendar days of the date an application for modification or collocation of wireless facilities is filed with the local governing authority, unless another date is specified in a written agreement between the local governing authority and the applicant, the local governing authority shall:

(1) Make its final decision to approve or disapprove the application; and

(2) Advise the applicant in writing of its final decision.

(e) Within 30 calendar days of the date an application for modification or collocation is filed with the local governing authority, the local governing authority shall notify the applicant in writing of any information required to complete the application. To the extent additional information is required to complete the application, the time required by the applicant to provide such information shall not be counted toward the 90 calendar day review period set forth in subsection (d) of this Code section. (Code 1981, § 36-66B-4, enacted by Ga. L. 2010, p. 328, § 1/SB 432.)

CHAPTER 67

ZONING PROPOSAL REVIEW PROCEDURES

Sec.
36-67-1 through 36-67-6 [Repealed].

36-67-1 through 36-67-6.

Reserved. Repealed by Ga. L. 2012, p. 351, § 1/HB 1089, effective April 19, 2012.

Editor's notes. — This chapter consisted of Code Sections 36-67-1 through 36-67-6, relating to zoning proposal review procedures, and was based on Ga. L. 1985, p. 1178, § 1; Ga. L. 1992, p. 2202, § 1; Ga. L. 1992, p. 3017, § 1; Ga. L. 2002, p. 1473, § 1.

CHAPTER 67A

CONFLICT OF INTEREST IN ZONING ACTIONS

Sec.
36-67A-1. Definitions.
36-67A-2. Disclosure of financial interests.
36-67A-3. Disclosure of campaign contributions.
36-67A-4. Penalties.
36-67A-5. Appointment of disinterested special master if governing authority unable to attain a quorum.
36-67A-6. Voting on zoning decision if ordinance being adopted for first time or ordinance being revised pursuant to comprehensive plan.

Cross references. — Ethics and Efficiency in Government Act, T. 28, C. 11. Codes of ethics and conflicts of interest, T. 45, C. 10.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, Chapter 85, as enacted by Ga. L. 1986, p. 1269, § 1, was redesignated as Chapter 67A.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

For note on 1991 amendments to this chapter, see 8 Ga. St. U. L. Rev. 114 (1992).

36-67A-1. Definitions.

As used in this chapter, the term:

(1) "Applicant" means any person who applies for a rezoning action and any attorney or other person representing or acting on behalf of a person who applies for a rezoning action.

(2) "Business entity" means any corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust.

(2.1) "Campaign contribution" means a "contribution" as defined in paragraph (7) of Code Section 21-5-3.

(3) "Financial interest" means all direct ownership interests of the total assets or capital stock of a business entity where such ownership interest is 10 percent or more.

(4) "Local government" means any county or municipality of this state.

(5) "Local government official" means any member of the governing authority of a local government or any member of a planning or zoning commission.

(6) "Member of the family" means the spouse, mother, father, brother, sister, son, or daughter of a local government official.

(6.1) "Opponent" means any person who opposes a rezoning action or any attorney or other person representing or acting on behalf of a person who opposes a rezoning action.

(6.2) "Oppose" means to appear before, discuss with, or contact, either orally or in writing, any local government or local government official and argue against a rezoning action.

(6.3) "Person" means an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

(7) "Property interest" means the direct ownership of real property and includes any percentage of ownership less than total ownership.

(8) "Real property" means any tract or parcel of land and, if developed, any buildings or structures located on the land.

(9) "Rezoning action" means action by local government adopting an amendment to a zoning ordinance which has the effect of rezoning real property from one zoning classification to another. (Code 1981, § 36-67A-1, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1991, p. 1365, § 1; Ga. L. 2005, p. 859, § 24/HB 48.)

Editor's notes. — Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001). For article on 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

RESEARCH REFERENCES

ALR. — Bias or interest of administrative officer sitting in zoning proceeding as necessitating disqualification of officer or affecting validity of zoning decision, 4 ALR6th 263.

36-67A-2. Disclosure of financial interests.

A local government official who knew or reasonably should have known he or she:

(1) Has a property interest in any real property affected by a rezoning action which that official's local government will have the duty to consider;

(2) Has a financial interest in any business entity which has a property interest in any real property affected by a rezoning action which that official's local government will have the duty to consider; or

(3) Has a member of the family having any interest described in paragraph (1) or (2) of this Code section

shall immediately disclose the nature and extent of such interest, in writing, to the governing authority of the local government in which the local government official is a member. The local government official who has an interest as defined in paragraph (1) or (2) of this Code section shall disqualify himself from voting on the rezoning action. The disqualified local government official shall not take any other action on behalf of himself or any other person to influence action on the application for rezoning. The disclosures provided for in this Code section shall be a public record and available for public inspection at any time during normal working hours. (Code 1981, § 36-67A-2, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1991, p. 1365, § 1.)

RESEARCH REFERENCES

ALR. — Bias or interest of administrative officer sitting in zoning proceeding as necessitating disqualification of officer or affecting validity of zoning decision, 4 ALR6th 263.

36-67A-3. Disclosure of campaign contributions.

(a) When any applicant for rezoning action has made, within two years immediately preceding the filing of that applicant's application for the rezoning action, campaign contributions aggregating $250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government showing:

(1) The name and official position of the local government official to whom the campaign contribution was made; and

(2) The dollar amount and description of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.

(b) The disclosures required by subsection (a) of this Code section shall be filed within ten days after the application for the rezoning action is first filed.

(c) When any opponent of a rezoning action has made, within two years immediately preceding the filing of the rezoning action being opposed, campaign contributions aggregating $250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority of the respective local government showing:

(1) The name and official position of the local government official to whom the campaign contribution was made; and

(2) The dollar amount and description of each campaign contribution made by the opponent to the local government official during the

two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.

(d) The disclosure required by subsection (c) of this Code section shall be filed at least five calendar days prior to the first hearing by the local government or any of its agencies on the rezoning application. (Code 1981, § 36-67A-3, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1991, p. 1365, § 1; Ga. L. 1993, p. 91, § 36.)

36-67A-4. Penalties.

Any person knowingly failing to comply with the requirements of this chapter or violating the provisions of this chapter shall be guilty of a misdemeanor. (Code 1981, § 36-67A-4, enacted by Ga. L. 1986, p. 1269, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1991, p. 1365, § 1.)

36-67A-5. Appointment of disinterested special master if governing authority unable to attain a quorum.

(a) Where one or more disqualifications required by this chapter result in the inability of the governing authority of the county or municipality to attain a quorum for the purpose of making a final decision when considering a rezoning action, the governing authority immediately shall petition the superior court wherein the property which is the subject of the rezoning is located for appointment of a disinterested special master for the purpose of hearing evidence regarding the proposed rezoning action and making a recommendation to the petitioning governing authority. The court, in its order appointing the special master, shall give such directions for notice and the service thereof as well as for the time in which a hearing must be held and recommendations issued as are just and appropriate under the circumstances and as are consistent with this chapter.

(b) The disinterested special master provided for in this Code section shall be appointed by the judge or judges of the superior courts of each judicial circuit and shall discharge the duties provided for in this Code section. The special master so appointed must be a competent attorney at law, be of good standing in his profession, and have at least three years' experience in the practice of law. He shall hold office at the pleasure of the judge and shall be removable at any time with or without cause. The court, in its order appointing the special master, shall designate the person or entity responsible for compensating the special master at a rate not less than $50.00 per day nor more than $250.00 per day for the time actually devoted to the hearing and consideration of the matter.

(c) The special master shall consider any factors relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property.

(d) The hearing provided for in this Code section and all records pertinent thereto shall be open and available to the public.

(e) Nothing contained in this Code section shall be construed as a delegation of the final decision-making powers of the governing authority to the special master and the recommendation of the special master is not a final decision as to the rezoning action. Where a special master has been appointed and has made a recommendation, the disqualification requirement of Code Section 36-67A-2 shall be waived. (Code 1981, § 36-67A-5, enacted by Ga. L. 1991, p. 1365, § 1.)

Law reviews. — For article, "The New Special Master Rule — Uniform Superior Court Rule 46: Life Jackets for the Courts in the Perfect Storm," see 15 (No. 4) Ga. St. B.J. 20 (2009).

36-67A-6. Voting on zoning decision if ordinance being adopted for first time or ordinance being revised pursuant to comprehensive plan.

Nothing in this chapter shall be construed to prohibit a local government official from voting on a zoning decision when the local government is adopting a zoning ordinance for the first time or when a local government is voting upon a revision of the zoning ordinance initiated by the local government pursuant to a comprehensive plan as defined in Chapter 70 of this title. (Code 1981, § 36-67A-6, enacted by Ga. L. 1991, p. 1365, § 1.)

CHAPTER 68

MERGER OF MUNICIPAL GOVERNMENT WITH COUNTY

Sec.
36-68-1. Constitutional authority; purpose.
36-68-2. Optional features of enabling local law.
36-68-3. Mandatory features of enabling local law.
36-68-4. Conditions under which county containing no municipality deemed to constitute a consolidated government; election; consolidated government to constitute a municipal corporation as well as a county for certain purposes.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

36-68-1. Constitutional authority; purpose.

This chapter is enacted pursuant to the authority of Article IX, Section III, Paragraph II, subparagraph (b) of the Constitution. It is the purpose of this chapter to grant authority to the General Assembly to provide by local law for a form of governmental reorganization whereby the charter of a municipality is repealed in order for the county in which the municipality is located to succeed to the corporate powers, functions, rights, assets, and liabilities of the municipality. This chapter shall be liberally construed to carry out effectively such purpose. (Code 1981, § 36-68-1, enacted by Ga. L. 1986, p. 1080, § 1.)

36-68-2. Optional features of enabling local law.

(a) Subject to the requirements of Code Section 36-68-3, when the charter of a municipality is repealed by local law as a part of achieving a governmental reorganization described in Code Section 36-68-1, the General Assembly may also provide by local law for any of the following matters:

(1) The form of government of the county which is the successor to the corporate powers, functions, rights, properties, and obligations of the municipality;

(2) The county to constitute a municipality as well as a county for the purposes of the application of the general laws and Constitution of this state;

(3) The exercise by the county of the powers vested in the former municipality and in municipalities generally as well as the powers vested in the county and counties generally;

(4) The county to receive any grants or other types of funds or revenues which the former municipality was entitled to receive as well as grants or other types of funds or revenues which the county is entitled to receive;

(5) The status of the county relative to any municipalities, other than the municipality having its charter repealed, located wholly or partially within such county;

(6) The transfer of all assets and properties of the municipality to the county;

(7) The assumption by the county of all contractual and other obligations of the municipality;

(8) The transfer of employees of the municipality to the county and for the preservation of any rights of such employees and their beneficiaries existing under any retirement or pension system of the municipality; and

(9) Any other matters reasonably necessary or convenient to achieve and implement effectively a governmental reorganization described by Code Section 36-68-1.

(b) A local law enacted pursuant to the authority of subsection (a) of this Code section may provide for such procedures, requirements, and limitations as may be reasonably necessary to control the subjects included within such local law, and the provisions of said subsection (a) shall not be construed to limit the manner in which the General Assembly may by local law control the subjects described by said subsection (a). (Code 1981, § 36-68-2, enacted by Ga. L. 1986, p. 1080, § 1; Ga. L. 1987, p. 3, § 36.)

OPINIONS OF THE ATTORNEY GENERAL

County lines. — Cities located in more than one county may be consolidated with a county government, however, in the absence of a change in county lines or some additional general legislation to provide for consolidating governments of a city and more than one county, the city would have to give up some of the city's territory. 1998 Op. Att'y Gen. No. U98-10.

36-68-3. Mandatory features of enabling local law.

(a) Local laws enacted pursuant to the authority of this chapter shall be subject to the following requirements:

(1) A local law enacted pursuant to the authority of Code Section 36-68-2 shall provide for the creation of a special tax district consisting of the territory lying within the corporate boundaries of the municipality for the purpose of the successor county government levying a tax therein sufficient to retire the bonded indebtedness of

the municipality which was outstanding on the effective date of the repeal of the charter of the municipality;

(2) The effectiveness of local laws described in paragraphs (3) and (4) of this subsection shall be contingent upon their approval by the governing authorities of the affected municipality and county prior to the referendums provided for in paragraphs (3) and (4) of this subsection;

(3) The effectiveness of a local law repealing the charter of a municipality shall be contingent upon its approval by a majority of the voters voting within the municipality and upon the parallel local law described by paragraph (4) of this subsection becoming effective; and

(4) The effectiveness of a local law enacted pursuant to the authority of Code Section 36-68-2 shall be contingent upon its approval by a majority of the voters voting throughout the territorial boundaries of the applicable county and upon the parallel local law described by paragraph (3) of this subsection becoming effective.

(b) The requirement for a referendum to repeal a municipal charter under paragraph (3) of subsection (a) of this Code section shall apply to the repeal of a municipal charter only when such repeal is a part of a governmental reorganization described by Code Section 36-68-1. (Code 1981, § 36-68-3, enacted by Ga. L. 1986, p. 1080, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1993, p. 91, § 36.)

36-68-4. Conditions under which county containing no municipality deemed to constitute a consolidated government; election; consolidated government to constitute a municipal corporation as well as a county for certain purposes.

(a) If as of July 1, 2007, or at any time thereafter there exists in this state a county in which no part of any municipal corporation is located, then the governing authority of that county may elect that the county shall thenceforth be deemed to be and constituted as a consolidated government for purposes of the laws of this state. In order to be effective under this Code section, the election by the county governing authority must comply with all of the following conditions:

(1) The election shall be carried out by the adoption of an appropriate resolution by the county governing authority which must be adopted by unanimous vote of the members of the governing authority voting thereon and ratified by a majority of the electors of the county voting in a referendum;

(2) The election must be made by the county governing authority within one calendar year after July 1, 2007, or such later date as this Code section becomes applicable to the county;

(3) The county must at the time of election be providing at least three of the services specified in subsection (b) of Code Section 36-30-7.1; and

(4) Within 30 days after the adoption of the resolution and ratification by the electors of the county a certification of election must be filed by the county with the Department of Community Affairs in such form and manner as may be specified by the department.

(b) A county which is constituted as a consolidated government under this Code section shall constitute a municipal corporation as well as a county for the purpose of the application of the general laws and Constitution of this state. Such a county may exercise the powers vested in municipalities generally as well as the powers vested in the county by general or local law. When similar but not identical laws apply to counties and municipalities and a determination must be made as to which law applies, the county which is constituted as a consolidated government may elect which law to proceed under.

(c) When a county has become subject to this Code section, no municipal corporation may thereafter be created in or extend into the county. (Code 1981, § 36-68-4, enacted by Ga. L. 2007, p. 588, § 1/HB 109.)

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

CHAPTER 69

MUTUAL AID

Sec.		Sec.	
36-69-1.	Short title.	36-69-5.	Responsibility for expenses and compensation of employees.
36-69-2.	"Local emergency" defined.	36-69-6.	Applicability of privileges, immunities, exemptions, and benefits.
36-69-3.	Extraterritorial cooperation and assistance to local law enforcement agencies or fire departments; commander of operations.	36-69-7.	Liability for acts or omissions of responding agency employees.
36-69-3.1.	Out-of-state contracts and mutual aid agreements.	36-69-8.	Construction of chapter.
36-69-4.	Powers and duties of employees of political subdivision or institution within the University System of Georgia who are rendering aid.	36-69-9.	Cumulative authority of chapter.
		36-69-10.	Emergencies to which chapter not applicable.

36-69-1. Short title.

This chapter shall be known and may be cited as the "Georgia Mutual Aid Act." (Code 1981, § 36-69-1, enacted by Ga. L. 1988, p. 887, § 1.)

36-69-2. "Local emergency" defined.

As used in this chapter, the term "local emergency" means the existence of conditions of extreme peril to the safety of persons and property within the territorial limits of a political subdivision of the state or on a campus of an institution within the University System of Georgia caused by natural disasters, riots, civil disturbances, or other situations presenting major law enforcement and other public safety problems, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision of the state and which require the combined forces of other political subdivisions of the state to combat. (Code 1981, § 36-69-2, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 1.)

36-69-3. Extraterritorial cooperation and assistance to local law enforcement agencies or fire departments; commander of operations.

(a)(1) Upon the request of a local law enforcement agency for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, the chief of police or public safety director of any municipality or chief of police or public safety director of any county police force may, with the

approval of the governing authority of any such officer's political subdivision, and the sheriff of any county may cooperate with and render assistance extraterritorially to such local law enforcement agency requesting the same.

(2)(A) Upon the request of a local law enforcement agency for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, the public safety director or chief of police of any institution within the University System of Georgia may, with the approval of the president of such institution, cooperate with and render assistance extraterritorially to such law enforcement agency requesting the same.

(B) Upon the request for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, which request is made by a public safety director or chief of police of any institution within the University System of Georgia after approval by the president of such institution, the chief of police or public safety director of any municipality or chief of police or public safety director of any county police force may, with the approval of the governing authority of any such officer's political subdivision, and the sheriff of the county may cooperate with and render assistance extraterritorially to such law enforcement agency of the institution requesting the same.

(b) Upon the request of any local fire department for assistance in a local emergency, in preventing or suppressing a fire, or in protecting life and property, the fire chief or public safety director of any local political subdivision may, with the approval of the governing authority of such political subdivision, cooperate with and render assistance extraterritorially to such local fire department requesting the same.

(c) Upon the request of any local law enforcement agency or local director of emergency medical services for assistance in a local emergency or in transporting wounded, injured, or sick persons to a place where medical or hospital care is furnished, emergency medical technicians employed by a political subdivision may, with the approval of the governing authority of such political subdivision, cooperate with and render assistance extraterritorially to such local law enforcement agency or local director of emergency services.

(d) Authorization for furnishing assistance extraterritorially may be granted by the sheriff of any county or the governing authority of a local political subdivision or the president of an institution within the University System of Georgia to any of its agencies or employees

covered by this Code section prior to any occurrence resulting in the need for such assistance; provided, however, that any prior authorization granted by the president of an institution within the University System of Georgia for the furnishing of assistance extraterritorially must be submitted to and approved by the board of regents before it becomes effective. Such authorization may provide limitations and restrictions on such assistance furnished extraterritorially, provided that such limitations and restrictions do not conflict with the provisions of Code Sections 36-69-4 through 36-69-6.

(e) The senior officer of the public safety agency of a political subdivision or institution within the University System of Georgia which requests assistance in a local emergency as provided in this Code section shall be in command of the local emergency as to strategy, tactics, and overall direction of the operations with respect to the public safety officers and employees rendering assistance extraterritorially at the request of such public safety agency. All orders or directions regarding the operations of the public safety officers and employees rendering assistance extraterritorially shall be relayed to the senior officer in command of the public safety agency rendering assistance extraterritorially. (Code 1981, § 36-69-3, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 2.)

36-69-3.1. Out-of-state contracts and mutual aid agreements.

Any county or municipality in this state shall be authorized to enter into contracts and mutual aid agreements with counties or municipalities of any other state or with any agency of the United States for the provision of law enforcement services in a local emergency to the extent that the laws of such other state or the United States permit such joint contracts or agreements to furnish one another assistance in law enforcement. Any such contract or mutual aid agreement shall have incorporated therein the provisions of Code Sections 36-69-4 through 36-69-8. Any such contract or mutual aid agreement entered into by a county shall not become effective until approved by the sheriff of such county. (Code 1981, § 36-69-3.1, enacted by Ga. L. 1991, p. 1311, § 1.)

36-69-4. Powers and duties of employees of political subdivision or institution within the University System of Georgia who are rendering aid.

Whenever the employees of any political subdivision or institution within the University System of Georgia are rendering aid outside their political subdivision or campus, respectively, and pursuant to the authority contained in this chapter, such employees shall have the same powers, duties, rights, privileges, and immunities as if they were

performing their duties in the political subdivision or on the campus of the institution in which they are normally employed. (Code 1981, § 36-69-4, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 3.)

36-69-5. Responsibility for expenses and compensation of employees.

Unless otherwise provided by contract, the political subdivision or institution within the University System of Georgia which furnishes any equipment pursuant to this chapter shall bear the loss or damage to such equipment and shall pay any expense incurred in the operation and maintenance thereof. Unless otherwise provided by contract, the political subdivision or institution within the University System of Georgia furnishing aid pursuant to this chapter shall compensate its employees during the time of rendering of such aid and shall defray the actual travel and maintenance expenses of such employees while they are rendering such aid. Such compensation shall include any amounts paid or due for compensation due to personal injury or death while such employees are engaged in rendering such aid. (Code 1981, § 36-69-5, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 4.)

36-69-6. Applicability of privileges, immunities, exemptions, and benefits.

All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and all pension, insurance, relief, disability, workers' compensation, salary, death, and other benefits which apply to the activity of such officers, agents, or employees of any such political subdivision or institution within the University System of Georgia when performing their respective functions within the territorial limits of their respective political subdivisions or campuses shall apply to such officers, agents, or employees to the same degree, manner, and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this chapter relating to mutual aid. The provisions of this Code section shall apply with equal effect to paid, volunteer, and auxiliary employees. (Code 1981, § 36-69-6, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 5.)

36-69-7. Liability for acts or omissions of responding agency employees.

Neither a public safety agency which requests assistance pursuant to Code Section 36-69-3 nor the political subdivision or institution of the University System of Georgia in which the public safety agency is

located shall be liable for any acts or omissions of employees of a responding public safety agency rendering assistance extraterritorially under the provisions of this chapter. (Code 1981, § 36-69-7, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 6.)

36-69-8. Construction of chapter.

(a) The provisions of this chapter shall not be construed as creating a duty on the part of any public safety agency of a local political subdivision or institution within the University System of Georgia to respond to a request from any public safety agency of another local political subdivision or institution of the University System of Georgia as authorized in Code Section 36-69-3.

(b) Notwithstanding the provisions of subsection (e) of Code Section 36-69-3, the provisions of this chapter shall not be construed as creating a duty on the part of a public safety agency rendering assistance extraterritorially to stay at the scene of a local emergency for any length of time. Such responding public safety agency may depart the scene of a local emergency at any time at the discretion of the officer in command of the public safety agency rendering assistance extraterritorially at the scene of the local emergency. (Code 1981, § 36-69-8, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 7.)

36-69-9. Cumulative authority of chapter.

(a) The authority of this chapter shall be cumulative to and in addition to mutual aid resource pacts authorized under Chapter 6 of Title 25 or contracts between political subdivisions for the provision of services authorized under Section II of Article IX of the Constitution.

(b) The authority of this chapter shall be cumulative to and in addition to any rights, powers, or authority exercised by the sheriffs of this state as of July 1, 1988. (Code 1981, § 36-69-9, enacted by Ga. L. 1988, p. 887, § 1.)

36-69-10. Emergencies to which chapter not applicable.

The provisions of this chapter shall not apply to any emergency in which the chief executive of a political subdivision assigns or makes available for duty the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, and to police, transportation, construction, and similar items or services for emergency management purposes outside of the physical limits of the subdivision as provided in Code Section 38-3-27. (Code 1981, § 36-69-10, enacted by Ga. L. 1988, p. 887, § 1.)

CHAPTER 69A

INTERLOCAL COOPERATION

Sec.
36-69A-1. Short title.
36-69A-2. Purpose.
36-69A-3. Definitions.
36-69A-4. Joint exercise of powers, privileges, or authority; agreements with public agencies of other states; required information and provisions; limitations on contracts.
36-69A-5. Preservation of sovereign immunity.
36-69A-6. Submission of agreements to and approval by officers or agencies with applicable powers of control.
36-69A-7. Powers of counties or municipalities in carrying out agreements.
36-69A-8. Contracts with agencies of other states for the performance of governmental services, activities, or undertakings.
36-69A-9. Cumulative authority.

36-69A-1. Short title.

This chapter shall be known and may be cited as the "Interlocal Cooperation Act." (Code 1981, § 36-69A-1, enacted by Ga. L. 2005, p. 686, § 1/HB 570.)

36-69A-2. Purpose.

It is the purpose of this chapter to permit counties and municipalities in this state the most efficient use of their powers by enabling them to cooperate with localities in other states on a basis of mutual advantage and provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities. (Code 1981, § 36-69A-2, enacted by Ga. L. 2005, p. 686, § 1/HB 570.)

36-69A-3. Definitions.

As used in this chapter, the term:

(1) "Public agency" means:

(A) Any political subdivision of this state other than a county school district or independent school district;

(B) Any volunteer fire department;

(C) Any volunteer rescue squad;

(D) Any agency of the state government or of the United States; and

(E) Any political subdivision of another state.

(2) "State" means a state of the United States. (Code 1981, § 36-69A-3, enacted by Ga. L. 2005, p. 686, § 1/HB 570.)

36-69A-4. Joint exercise of powers, privileges, or authority; agreements with public agencies of other states; required information and provisions; limitations on contracts.

(a) Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. The authority for joint or cooperative action of political subdivisions shall apply to powers, privileges, or authority vested in, funded by, or under the control of their governing bodies.

(b) Any public agency in this state may enter into agreements with a public agency in another state for joint or cooperative action pursuant to the provisions of this chapter to effectuate the purposes of this chapter. Appropriate action of the governing bodies of the participating public agencies by resolution or otherwise pursuant to law shall be necessary before any such agreement may enter into force. Any such agreement shall be subject to the requirements provided by the Constitution and general laws of this state with respect to intergovernmental contracts.

(c) Any such agreement shall specify the following:

(1) The precise organization, composition, and nature of any separate legal or administrative entity or entities created thereby, which may include, but is not limited to, a corporation not for profit, together with the powers delegated to such a corporation;

(2) Its purpose or purposes;

(3) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for such undertaking;

(4) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(5) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity or entities to conduct the joint or cooperative undertaking, the agreement shall, in addition to the requirements of subsection (c) of this Code section contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented; and

(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(e)(1) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that, to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity or entities created by an agreement made hereunder, those performances may be offered in satisfaction of the obligation or responsibility.

(2)(A) A separate legal or administrative entity, created by interlocal agreement under this chapter, is not empowered to:

(i) Assess, levy, or collect ad valorem taxes;

(ii) Issue general obligation bonds; or

(iii) Exercise the power of eminent domain.

(B) However, to the extent that the participating political subdivisions possess such powers, the political subdivisions may exercise such powers on behalf and for the benefit of the separate legal or administrative entity.

(f)(1) Any agreement under this chapter shall contain provisions for the following:

(A) The contract shall terminate absolutely and without further obligation on the part of the county or municipality at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed as provided in this Code section;

(B) The contract may provide for automatic renewal unless positive action is taken by the county or municipality to terminate such contract, and the nature of such action shall be determined by the county or municipality and specified in the contract;

(C) The contract shall state the total obligation of the county or municipality for the calendar year of execution and shall further state the total obligation which will be incurred in each calendar year renewal term, if renewed; and

(D) The contract shall provide that title to any supplies, materials, equipment, or other personal property shall remain in the vendor until fully paid for by the county or municipality.

(2) In addition to the provisions enumerated in paragraph (1) of this subsection, any contract authorized by this chapter may include:

(A) A provision which requires that the contract will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the county or municipality under the contract; or

(B) Any other provision reasonably necessary to protect the interests of the county or municipality.

(3) Any contract developed under this chapter containing the provisions enumerated in paragraph (1) of this subsection shall be deemed to obligate the county or municipality only for those sums payable during the calendar year of execution or, in the event of a renewal by the county or municipality, for those sums payable in the individual calendar year renewal term.

(4) No contract developed and executed pursuant to this chapter shall be deemed to create a debt of the county or municipality for the payment of any sum beyond the calendar year of execution or, in the event of a renewal, beyond the calendar year of such renewal.

(5) No contract developed and executed pursuant to this chapter may be delivered if the principal portion of such contract, when added to the amount of debt incurred by any county or municipality pursuant to Article IX, Section V, Paragraph I of the Constitution of Georgia, exceeds 10 percent of the assessed value of all taxable property within such county or municipality. (Code 1981, § 36-69A-4, enacted by Ga. L. 2005, p. 686, § 1/HB 570.)

36-69A-5. Preservation of sovereign immunity.

An agreement entered into pursuant to this chapter between or among one or more counties or municipalities of this state and one or more public agencies of another state or of the United States shall not constitute a waiver of sovereign immunity. All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and all pension, insurance, relief, disability, workers' compensation, salary, death, and other benefits which apply to the activity of such officers, agents, or employees of any such political subdivision or institution within the University System of Georgia when performing their respective functions within the territorial limits of their respective political subdivisions or campuses shall apply to such officers, agents, or employees to the same degree, manner, and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this chapter relating to mutual aid. The provisions of this Code section shall apply with equal

effect to paid, volunteer, and auxiliary employees. In any case or controversy involving performance or interpretation thereof or liability thereunder, no action may be brought except in the state or superior court of the county in this state which executed the agreement or the county in this state in which a city in this state is located which executed the agreement. (Code 1981, § 36-69A-5, enacted by Ga. L. 2005, p. 686, § 1/HB 570.)

36-69A-6. Submission of agreements to and approval by officers or agencies with applicable powers of control.

In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by such state officer or agency as to all matters within such officer's or agency's jurisdiction. (Code 1981, § 36-69A-6, enacted by Ga. L. 2005, p. 686, § 1/HB 570.)

36-69A-7. Powers of counties or municipalities in carrying out agreements.

Any county or municipality entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish. (Code 1981, § 36-69A-7, enacted by Ga. L. 2005, p. 686, § 1/HB 570.)

36-69A-8. Contracts with agencies of other states for the performance of governmental services, activities, or undertakings.

Any one or more counties or municipalities in this state may contract with any one or more public agencies of another state to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided, however, that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties. (Code 1981, § 36-69A-8, enacted by Ga. L. 2005, p. 686, § 1/HB 570.)

36-69A-9. Cumulative authority.

The authority of this chapter shall be cumulative to and in addition to any rights, powers, or authority otherwise authorized under the Constitution or general laws of this state. (Code 1981, § 36-69A-9, enacted by Ga. L. 2005, p. 686, § 1/HB 570.)

CHAPTER 70

COORDINATED AND COMPREHENSIVE PLANNING AND SERVICE DELIVERY BY COUNTIES AND MUNICIPALITIES

Article 1

Planning

Sec.
36-70-1. Legislative intent and purpose.
36-70-2. Definitions.
36-70-3. Powers of municipalities and counties.
36-70-4. Municipality and county as members of regional commissions; membership dues; participation in compiling Department of Community Affairs data base.
36-70-5. Effect of chapter on county and municipal zoning powers.

Article 2

Service Delivery

Sec.
36-70-20. Legislative intent.
36-70-21. Deadline date for implementation agreement.
36-70-22. Date for process initiation.
36-70-23. Required components.
36-70-24. Criteria for service delivery strategy.
36-70-25. Approval; extension of deadline date.
36-70-25.1. Dispute resolution procedures.
36-70-26. Required filing; verification of components.
36-70-27. Limitation of funding for projects inconsistent with strategy.
36-70-28. "Affected municipality" defined; review and revision of strategy.

Administrative rules and regulations. — Grants of OneGeorgia Authority, Official Compilation of the Rules and Regulations of the State of Georgia, Chapter 413.

Life sciences facilities fund, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Affairs, Chapter 110-25.

ARTICLE 1

PLANNING

36-70-1. Legislative intent and purpose.

The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. In addition, the natural resources, environment, and vital areas of the state are of vital importance to the state and its citizens. The state has an essential public interest in protecting and preserving the natural resources, the environment, and the vital areas of the state. The purpose of this article is to provide for local governments to serve these essential public interests of the state by authorizing and promoting the

establishment, implementation, and performance of coordinated and comprehensive planning by municipal governments and county governments, and this article shall be construed liberally to achieve that end. This article is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV. (Code 1981, § 36-70-1, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1997, p. 1567, § 1.)

Law reviews. — For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990).

36-70-2. Definitions.

As used in this chapter, the term:

(1) "Comprehensive plan" means any plan by a county or municipality covering such county or municipality proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans established by the department.

(2) "Coordinated and comprehensive planning" means planning by counties and municipalities undertaken in accordance with the minimum standards and procedures for preparation of plans, for implementation of plans, and for participation in the coordinated and comprehensive planning process, as established by the department.

(3) "County" means any county of this state.

(4) "Department" means the Department of Community Affairs of the State of Georgia created pursuant to Article 1 of Chapter 8 of Title 50.

(5) "Governing authority" or "governing body" means the board of commissioners of a county, sole commissioner of a county, council, commissioners, or other governing authority for a county or municipality.

(5.1) "Inactive municipality" means any municipality which has not for a period of three consecutive calendar years carried out any of the following activities:

(A) The levying or collecting of any taxes or fees;

(B) The provision of any of the following governmental services: water; sewage; garbage collection; police protection; fire protection; or library; or

(C) The holding of a municipal election.

(5.2) "Local government" means any county as defined in paragraph (3) of this Code section or any municipality as defined in paragraph (7) of this Code section. The term does not include any school district of this state nor any sheriff, clerk of the superior court, judge of the probate court, or tax commissioner or the office, personnel, or services provided by such elected officials.

(5.3) "Mechanisms" includes, but is not limited to, intergovernmental agreements, ordinances, resolutions, and local Acts of the General Assembly in effect on July 1, 1997, or executed thereafter.

(6) "Minimum standards and procedures" means the minimum standards and procedures for preparation of comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process, as established by the department, in accordance with Article 1 of Chapter 8 of Title 50. Minimum standards and procedures shall include any standards and procedures for such purposes prescribed by a regional commission for counties and municipalities within its region and approved in advance by the department.

(7) "Municipality" means any municipal corporation of the state and any consolidated city-county government of the state.

(8) "Region" means the territorial area within the boundaries of operation for any regional commission, as such boundaries shall be established from time to time by the board of the department.

(9) "Regional commission" means a regional commission established under Article 2 of Chapter 8 of Title 50. (Code 1981, § 36-70-2, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1992, p. 2056, § 1; Ga. L. 1993, p. 91, § 36; Ga. L. 1997, p. 1567, § 1; Ga. L. 2004, p. 585, § 1; Ga. L. 2008, p. 181, § 16/HB 1216.)

36-70-3. Powers of municipalities and counties.

The governing bodies of municipalities and counties are authorized:

(1) To develop, or to cause to be developed pursuant to a contract or other arrangement approved by the governing body, a comprehensive plan;

(2) To develop, establish, and implement land use regulations which are consistent with the comprehensive plan of the municipality or county, as the case may be;

(3) To develop, establish, and implement a plan for capital improvements which conforms to minimum standards and procedures

and to make any capital improvements plan a part of the comprehensive plan of the municipality or county, as the case may be;

(4) To employ personnel, or to enter into contracts with a regional commission or other public or private entity, to assist the municipality or county in developing, establishing, and implementing its comprehensive plan;

(5) To contract with one or more counties or municipalities, or both, for assistance in developing, establishing, and implementing a comprehensive plan, regardless of whether the contract is to obtain such assistance or to provide such assistance; and

(6) To take all action necessary or desirable to further the policy of the state for coordinated and comprehensive planning, without regard for whether any such action is specifically mentioned in this article or is otherwise specifically granted by law. (Code 1981, § 36-70-3, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2008, p. 181, § 16/HB 1216.)

36-70-4. Municipality and county as members of regional commissions; membership dues; participation in compiling Department of Community Affairs data base.

(a) Each municipality and county shall automatically be a member of the regional commission for the region which includes such municipality or county, as the case may be.

(b) Each municipality and county shall pay, when and as they become due, the annual dues required for membership in its regional commission.

(c) Each municipality and county shall participate in compiling a Georgia data base and network, coordinated by the department, to serve as a comprehensive source of information available, in an accessible form, to local governments and state agencies. (Code 1981, § 36-70-4, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1997, p. 1567, § 1; Ga. L. 2008, p. 181, § 16/HB 1216.)

36-70-5. Effect of chapter on county and municipal zoning powers.

(a) Except as provided in subsection (b) of this Code section, nothing in this article shall limit or compromise the right of the governing body of any county or municipality to exercise the power of zoning.

(b) Any municipality which is as of April 17, 1992, an inactive municipality shall not on or after April 17, 1992, exercise any powers under this article or exercise any zoning powers, until and unless the

municipality is restored to active status by the enactment of an appropriate new or amended charter by local Act of the General Assembly. Any municipality which becomes an inactive municipality after April 17, 1992, shall not after becoming inactive exercise powers under this article or exercise any zoning powers, until and unless the municipality is restored to active status by the enactment of an appropriate new or amended charter by local Act of the General Assembly.

(c) Any county which has located within its boundaries all or any part of any inactive municipality shall have full authority to exercise through its governing body all planning and zoning powers within the area of such inactive municipality within the county, in the same manner as if such area were an unincorporated area. (Code 1981, § 36-70-5, enacted by Ga. L. 1989, p. 1317, § 4.1; Ga. L. 1992, p. 2056, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 1997, p. 1567, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "April 17, 1992" was substituted for "the effective date of this subsection" in three places in subsection (b).

ARTICLE 2

SERVICE DELIVERY

36-70-20. Legislative intent.

The intent of this article is to provide a flexible framework within which local governments in each county can develop a service delivery system that is both efficient and responsive to citizens in their county. The General Assembly recognizes that the unique characteristics of each county throughout the state preclude a mandated legislative outcome for the delivery of services in every county. The process provided by this article is intended to minimize inefficiencies resulting from duplication of services and competition between local governments and to provide a mechanism to resolve disputes over local government service delivery, funding equity, and land use. The local government service delivery process should result in the minimization of noncompatible municipal and county land use plans and in a simple, concise agreement describing which local governments will provide which service in specified areas within a county and how provision of such services will be funded. (Code 1981, § 36-70-20, enacted by Ga. L. 1997, p. 1567, § 1.)

Law reviews. — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Declaratory and injunctive relief effectively denied. — Because the strategies by a county and the municipalities within the county under the Service Delivery Strategic Act, O.C.G.A. § 36-70-20 et seq., had nothing to do with a developer's actions, given that it was not the decision of the developer, or any individual property owner, to control the property owner's supplier of water, the developer was properly granted summary judgment in a city's action for declaratory and injunctive relief. Also, the city's quest to overturn the May 2005 service delivery strategy was rendered moot by the enactment of later strategy. City of Demorest v. Town of Mt. Airy, 282 Ga. 653, 653 S.E.2d 43 (2007).

Effect on existing utility authorities. — Water authority's claims for declaratory relief and to enjoin a county and a city from encroaching on its territory were rejected as a service agreement between the parties under the Service Delivery Act, O.C.G.A. § 36-70-20 et seq., lawfully limited the authority's territory, which had been granted in the authority's creating legislation. Alcovy Shores Water & Sewerage Auth. v. Jasper County, 277 Ga. App. 341, 626 S.E.2d 560 (2006).

Cited in Higdon v. City of Senoia, 273 Ga. 83, 538 S.E.2d 39 (2000); Cobb County v. City of Smyrna, 270 Ga. App. 471, 606 S.E.2d 667 (2004).

36-70-21. Deadline date for implementation agreement.

Each county and municipality shall execute an agreement for the implementation of a local government service delivery strategy as set forth in this article by July 1, 1999. (Code 1981, § 36-70-21, enacted by Ga. L. 1997, p. 1567, § 1.)

36-70-22. Date for process initiation.

Each county shall initiate the process for developing a local government service delivery strategy after July 1, 1997, but no later than January 1, 1998. Initiation of the strategy shall be accomplished by the provision of a written notice from the county to the governing bodies of all municipalities located wholly or partially within the county or providing services within the county and to other counties providing services within the county. Such notice shall state the date, time, and place for a joint meeting at which designated representatives of all local governing bodies shall assemble for the purpose of commencing deliberations on the service delivery strategy. The notice shall be sent not more than 45 and not less than 15 days prior to the meeting date. In the event the county governing authority fails to initiate the process by January 1, 1998, any municipality within the county may do so by sending a written notice, containing the required information, to the county and all other municipalities. (Code 1981, § 36-70-22, enacted by Ga. L. 1997, p. 1567, § 1.)

36-70-23. Required components.

Each local government service delivery strategy shall include the following components:

(1) An identification of all local government services presently provided or primarily funded by each general purpose local government and each authority within the county, or providing services within the county, and a description of the geographic area in which the identified services are provided by each jurisdiction;

(2) An assignment of which local government or authority, pursuant to the requirements of this article, will provide each service, the geographic areas of the county in which such services are to be provided, and a description of any services to be provided by any local government to any geographic area outside its geographical boundaries. In the event two or more local governments within the county are assigned responsibility for providing identical services within the same geographic area, the strategy shall include an explanation of such arrangement;

(3) A description of the source of the funding for each service identified pursuant to paragraph (2) of this Code section; and

(4) An identification of the mechanisms to be utilized to facilitate the implementation of the services and funding responsibilities identified pursuant to paragraphs (2) and (3) of this Code section. (Code 1981, § 36-70-23, enacted by Ga. L. 1997, p. 1567, § 1.)

36-70-24. Criteria for service delivery strategy.

In the development of a service delivery strategy, the following criteria shall be met:

(1) The strategy shall promote the delivery of local government services in the most efficient, effective, and responsive manner. The strategy shall identify steps which will be taken to remediate or avoid overlapping and unnecessary competition and duplication of service delivery and shall identify the time frame in which such steps shall be taken. When a municipality provides a service at a higher level than the base level of service provided throughout the geographic area of the county by the county, such service shall not be considered a duplication of the county service;

(2)(A) The strategy shall provide that water or sewer fees charged to customers located outside the geographic boundaries of a service provider shall not be arbitrarily higher than the fees charged to customers receiving such service which are located within the geographic boundaries of the service provider.

(B) If a governing authority disputes the reasonableness of water and sewer rate differentials imposed within its jurisdiction by another governing authority, that disputing governing authority may hold a public hearing for the purpose of reviewing the rate

differential. Following the preparation of a rate study by a qualified engineer, the governing authority may challenge the arbitrary rate differentials on behalf of its residents in a court of competent jurisdiction. Prior to such challenge, the dispute shall be submitted to some form of alternative dispute resolution;

(3)(A) The strategy shall ensure that the cost of any service which a county provides primarily for the benefit of the unincorporated area of the county shall be borne by the unincorporated area residents, individuals, and property owners who receive the service. Further, when the county and one or more municipalities jointly fund a county-wide service, the county share of such funding shall be borne by the unincorporated residents, individuals, and property owners that receive the service.

(B) Such funding shall be derived from special service districts created by the county in which property taxes, insurance premium taxes, assessments, or user fees are levied or imposed or through such other mechanism agreed upon by the affected parties which complies with the intent of subparagraph (A) of this paragraph; and

(4)(A) Local governments within the same county shall, if necessary, amend their land use plans so that such plans are compatible and nonconflicting, or, as an alternative, they shall adopt a single land use plan for the unincorporated and incorporated areas of the county.

(B) The provision of extraterritorial water and sewer services by any jurisdiction shall be consistent with all applicable land use plans and ordinances. (Code 1981, § 36-70-24, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 1999, p. 789, § 1; Ga. L. 2004, p. 69, § 20.)

Editor's notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews. — For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005). For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Constitutionality. — Provisions of former O.C.G.A. §§ 36-70-24(4)(c) and 36-36-11, pertaining to the establishment of a dispute resolution process when a bona fide land use dispute arises between a city and county over the use of land which is the subject of annexation, do not violate Ga. Const. 1983, Art. IX, Sec. II, Para. IV. Higdon v. City of Senoia, 273 Ga. 83, 538 S.E.2d 39 (2000) (decided prior to 2004 amendment of O.C.G.A. §§ 36-70-24 and 36-36-11).

Cited in Baker v. City of Marietta, 271 Ga. 210, 518 S.E.2d 879 (1999).

36-70-25. Approval; extension of deadline date.

(a) Approval of the local government service delivery strategy shall be accomplished as provided for in this Code section.

(b) The county and each municipality within the county shall participate in the development of the strategy. Approval of the strategy shall be accomplished by adoption of a resolution:

(1) By the county governing authority;

(2) By the governing authority of municipalities located within the county which have a population of 9,000 or greater within the county;

(3) By the municipality which serves as the county site if not included in paragraph (2) of this subsection; and

(4) By no less than 50 percent of the remaining municipalities within the county which contain at least 500 persons within the county if not included in paragraph (2) or (3) of this subsection.

(c) For the purpose of determining population, the population in the most recent United States decennial census shall be utilized.

(d) The adoption of a service delivery strategy specified in Code Section 36-70-21 may be extended to a date certain no later than 120 days following the date otherwise specified in Code Section 36-70-21 upon written agreement of the local governments enumerated in subsection (b) of this Code section. In the event such an agreement is executed, the sanctions specified in Code Section 36-70-27 shall not apply until on and after such extended date. (Code 1981, § 36-70-25, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2000, p. 1439, § 1.)

JUDICIAL DECISIONS

Cited in City of Demorest v. Town of Mt. Airy, 282 Ga. 653, 653 S.E.2d 43 (2007).

36-70-25.1. Dispute resolution procedures.

(a) As used in this Code section, the term "affected municipality" means each municipality required to adopt a resolution approving the local government service delivery strategy pursuant to subsection (b) of Code Section 36-70-25.

(b) If a county and the affected municipalities in the county do not reach an agreement on a service delivery strategy, the provisions of this Code section shall be followed as the process to resolve the dispute.

(c) If a county and the affected municipalities in the county are unable to reach an agreement on the strategy prior to the imposition of

the sanctions provided in Code Section 36-70-27, a means for facilitating an agreement through some form of alternative dispute resolution shall be employed. Where the alternative dispute resolution action is unsuccessful, the neutral party or parties shall prepare a report which shall be provided to each governing authority and made a public record. The cost of alternative dispute resolution authorized by this subsection shall be shared by the parties to the dispute pro rata based on each party's population according to the most recent United States decennial census. The county's share shall be based upon the unincorporated population of the county.

(d) In the event that the county and the affected municipalities in the county fail to reach an agreement after the imposition of sanctions provided in Code Section 36-70-27, then the following process is available to the parties:

(1)(A) The county or any affected municipality located within the county may file a petition in superior court of the county seeking mandatory mediation. Such petition shall be assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit.

(B) The visiting or senior judge shall appoint a mediator within 30 days of receipt of the petition. Mediation shall commence within 30 days of the appointment of a mediator. The mandatory mediation process shall be completed within 60 days following the appointment of the mediator. A majority of the members of the governing body of the county and each affected municipality shall attend the initial mediation. Following the initial meeting, the mediation shall proceed in the manner established at the initial meeting. If there is no agreement on how the mediation should proceed, a majority of the members of the governing body of the county and each affected municipality shall be required to attend each mediation session unless another process is agreed upon. Unless otherwise provided in accordance with paragraph (2) of this subsection, the cost of alternative dispute resolution authorized by this subsection shall be shared by the parties to the dispute pro rata based on each party's population according to the most recent United States decennial census.

(C) During the mediation process described in this subsection, the sanctions imposed pursuant to Code Section 36-70-27 may, by order of the court, be held in abeyance by the judge against any or all of the parties participating in such mediation process.

(D) The judge may, by order of the court, substitute any mediation entered into pursuant to subsection (c) of this Code section for the mediation required pursuant to this subsection; and

(2) If no service delivery strategy has been submitted for verification to the Department of Community Affairs at the conclusion of the mediation, any aggrieved party may petition the superior court and seek resolution of the items remaining in dispute. The visiting or senior judge shall conduct an evidentiary hearing or hearings as such judge deems necessary and render a decision with regard to the disputed items. In rendering the decision, the judge shall consider the required elements of a service delivery strategy with a goal of achieving the intent of this article as specified in Code Section 36-70-20. It shall be in the discretion of the judge to hold the sanctions specified in Code Section 36-70-27 against one or more of the parties in abeyance pending the disposition of the action. The court is authorized to utilize its contempt powers to obtain compliance with its decision relating to the disputed items under review. The judge shall be authorized to impose mediation costs and court costs against any party upon a finding of bad faith.

(e) The court shall notify, or cause to be notified, the Department of Community Affairs in the event that penalties are abated during the pendency of mediation or litigation held pursuant to subsection (d) of this Code section. A notice shall also be sent in the event penalties become applicable to the parties.

(f) Any service delivery agreement implemented as a result of the process set forth in this Code section shall remain in effect until revised pursuant to Code Section 36-70-28. (Code 1981, § 36-70-25.1, enacted by Ga. L. 2000, p. 1439, § 1; Ga. L. 2006, p. 72, § 36/SB 465.)

Code Commission notes. — Ga. L. 2000, p. 1439, § 1, as enacted, contained two subsections designated as (d). Pursuant to Code Section 28-9-5, in 2000, the second subsection (d) was redesignated as subsection (e) and subsection (e) was redesignated as subsection (f); "subsection (c)" was substituted for "subsection (b)" in subparagraph (d)(1)(D); and "subsection (d)" was substituted for "subsection (c)" in newly designated subsection (e).

Pursuant to Code Section 28-9-5, in 2006, "imposition" was substituted for "impositions" in the introductory language of subsection (d).

JUDICIAL DECISIONS

Cited in Cobb County v. City of Smyrna, 270 Ga. App. 471, 606 S.E.2d 667 (2004).

36-70-26. Required filing; verification of components.

Each county shall file the agreement for the implementation of strategy required by Code Section 36-70-21 with the department. The department shall, within 30 days of receipt, verify that the strategy includes the components enumerated in Code Section 36-70-23 and the minimum criteria enumerated in Code Section 36-70-24. The depart-

ment, however, shall neither approve nor disapprove the specific elements or outcomes of the strategy. (Code 1981, § 36-70-26, enacted by Ga. L. 1997, p. 1567, § 1.)

36-70-27. Limitation of funding for projects inconsistent with strategy.

(a)(1) No state administered financial assistance or grant, loan, or permit shall be issued to any local government or authority which is not included in a department verified strategy or for any project which is inconsistent with such strategy; provided, however, that a municipality or authority located or operating in more than one county shall be included in a department verified strategy for each county wherein the municipality or authority is located or operating.

(2) Paragraph (1) of this subsection shall not apply to any drinking water project of the Georgia Environmental Finance Authority or of any local government or authority if such project is a proposed drinking water supply reservoir or any water withdrawal, treatment, distribution, or other potable water facility associated with such reservoir and the project shall furnish potable water to wholesale users in incorporated areas in one or more counties. Within one year after such proposed drinking water supply reservoir becomes operational, the local governments and authorities in the affected county or counties shall update their service delivery strategy or strategies to be consistent with water supply arrangements resulting from the operation of such reservoir.

(b)(1) If a municipality containing fewer than 500 persons within the county fails to establish a process to resolve disputes as required by subparagraph (C) of paragraph (4) of Code Section 36-70-24, the sanctions specified in subsection (a) of this Code section shall not be imposed upon:

(A) The county within which any such municipality or portion of any such municipality is located; or

(B) Any other municipality located in such county.

(2) The provisions of this subsection shall apply only if a process to resolve disputes required by subparagraph (C) of paragraph (4) of Code Section 36-70-24 has been established between the county and each municipality containing 500 or more persons within the county.

(c) Any local government or authority which is subject to the sanctions specified in subsection (a) of this Code section shall become eligible for state administered financial assistance or grants, loans, or permits on the first day of the month following verification by the department that the requirements of Code Section 36-70-26 have been

met. (Code 1981, § 36-70-27, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 1999, p. 789, § 2; Ga. L. 2000, p. 1439, § 2; Ga. L. 2010, p. 1088, § 1/HB 406.)

The 2010 amendment, effective June 4, 2010, in subsection (a), designated the existing provisions as paragraph (a)(1), deleted "On and after July 1, 1999," at the beginning of paragraph (a)(1), and added paragraph (a)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "Georgia Environmental Finance Authority" was substituted for "Georgia Environmental Facilities Authority" in paragraph (a)(2).

36-70-28. "Affected municipality" defined; review and revision of strategy.

(a) As used in this Code section, the term "affected municipality" means each municipality required to adopt a resolution approving the local government service delivery strategy pursuant to subsection (b) of Code Section 36-70-25.

(b) Each county and affected municipality shall review, and revise if necessary, the approved strategy:

(1) In conjunction with updates of the comprehensive plan as required by Article 1 of this chapter;

(2) Whenever necessary to change service delivery or revenue distribution arrangements;

(3) Whenever necessary due to changes in revenue distribution arrangements;

(4) In the event of the creation, abolition, or consolidation of local governments;

(5) When the existing service delivery strategy agreement expires; or

(6) Whenever the county and affected municipalities agree to revise the strategy.

(c) In the event that a county or an affected municipality located within the county refuses to review and revise, if necessary, a strategy in accordance with paragraphs (2) and (3) of subsection (b) of this Code section, then any of the parties may use the alternative dispute resolution and appeal procedures set forth in subsection (d) of Code Section 36-70-25.1. (Code 1981, § 36-70-28, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 2000, p. 1439, § 3; Ga. L. 2006, p. 72, § 36/SB 465.)

CHAPTER 71

DEVELOPMENT IMPACT FEES

Sec.
36-71-1. Short title; legislative findings and intent.
36-71-2. Definitions.
36-71-3. Imposition of development impact fees.
36-71-4. Calculation of fees.
36-71-5. Development Impact Fee Advisory Committee.
36-71-6. Hearings on proposed fee ordinance.
36-71-7. Credit for present value of construction accepted by municipality or county from developer.
36-71-8. Deposit and expenditure of fees; annual report.
36-71-9. Refunds.
36-71-10. Appeal of fee determination; arbitration.
36-71-11. Intergovernmental agreements.
36-71-12. Existing municipal and county laws to be brought into conformance with chapter.
36-71-13. Construction of reasonable project improvements; private agreements between property owners or developers and municipalities and counties; hook-up or connection fees for water or sewer service; applicability of chapter to water authorities.

Administrative rules and regulations. — Minimum planning standards and procedures for local comprehensive planning, Georgia Department of Community Affairs, Office of Coordinated Planning, Official Compilation of the Rules and Regulations of the State of Georgia, Sec. 110-3-2-.07.

Law reviews. — For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990).

36-71-1. Short title; legislative findings and intent.

(a) This chapter shall be known and may be cited as the "Georgia Development Impact Fee Act."

(b) The General Assembly finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens of the State of Georgia. It is the intent of this chapter to:

(1) Ensure that adequate public facilities are available to serve new growth and development;

(2) Promote orderly growth and development by establishing uniform standards by which municipalities and counties may require that new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;

(3) Establish minimum standards for the adoption of development impact fee ordinances by municipalities and counties; and

(4) Ensure that new growth and development is required to pay no more than its proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development exactions. (Code 1981, § 36-71-1, enacted by Ga. L. 1990, p. 692, § 1.)

Law reviews. — For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For survey article on real property law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 397 (2003). For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005) and 58 Mercer L. Rev. 1 (2006). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005) and 58 Mercer L. Rev. 267 (2006). For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Legislative intent. — Intent of the Georgia Development Impact Fee Act, O.C.G.A. § 36-71-1 et seq., was to promote orderly growth and development by establishing uniform standards by which municipalities and counties could require that new growth and development pay a proportionate share, but no more than its proportionate share, of the cost of new facilities needed to serve new growth and development. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607 (2004).

County ordinance imposing impact fees on new developments only in unincorporated areas. — Because Cherokee County, Georgia lacked the power to impose impact fees on new development in incorporated areas of Cherokee County, the county acted rationally and reasonably by imposing impact fees on new developments only in unincorporated areas. Cherokee County v. Greater Atlanta Homebuilders Ass'n, 255 Ga. App. 764, 565 S.E.2d 925 (2002).

Applicability. — Georgia Department of Community Affairs has properly interpreted the second and third sentences of O.C.G.A. § 36-71-13(c) to apply only to "governmental entities," as that term is defined by the Georgia Development Impact Fee Act, O.C.G.A. § 36-71-1 et seq. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607 (2004).

36-71-2. Definitions.

As used in this chapter, the term:

(1) "Capital improvement" means an improvement with a useful life of ten years or more, by new construction or other action, which increases the service capacity of a public facility.

(2) "Capital improvements element" means a component of a comprehensive plan adopted pursuant to Chapter 70 of this title which sets out projected needs for system improvements during a planning horizon established in the comprehensive plan, a schedule of capital improvements that will meet the anticipated need for system improvements, and a description of anticipated funding sources for each required improvement.

(3) "Comprehensive plan" has the same meaning as provided for in Chapter 70 of this title.

(4) "Developer" means any person or legal entity undertaking development.

(5) "Development" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and need for public facilities.

(6) "Development approval" means any written authorization from a municipality or county which authorizes the commencement of construction.

(7) "Development exaction" means a requirement attached to a development approval or other municipal or county action approving or authorizing a particular development project, including but not limited to a rezoning, which requirement compels the payment, dedication, or contribution of goods, services, land, or money as a condition of approval.

(8) "Development impact fee" means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development.

(9) "Encumber" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a municipality or county.

(10) "Feepayor" means that person who pays a development impact fee or his successor in interest where the right or entitlement to any refund of previously paid development impact fees which is required by this chapter has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

(11) "Governmental entity" means any water authority, water and sewer authority, or water or waste-water authority created by or pursuant to an Act of the General Assembly of Georgia.

(12) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities in terms of demand to capacity ratios, the comfort and convenience of use or service of public facilities, or both.

(13) "Present value" means the current value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.

(14) "Project" means a particular development on an identified parcel of land.

(15) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement and the physical location of the improvement on site or off site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities approved by the governing body of the municipality or county shall be considered a project improvement.

(16) "Proportionate share" means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project within the defined service area.

(17) "Public facilities" means:

(A) Water supply production, treatment, and distribution facilities;

(B) Waste-water collection, treatment, and disposal facilities;

(C) Roads, streets, and bridges, including rights of way, traffic signals, landscaping, and any local components of state or federal highways;

(D) Storm-water collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(E) Parks, open space, and recreation areas and related facilities;

(F) Public safety facilities, including police, fire, emergency medical, and rescue facilities; and

(G) Libraries and related facilities.

(18) "Service area" means a geographic area defined by a municipality, county, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both.

(19) "System improvement costs" means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvement element, and administrative costs, provided that such administrative costs shall not exceed 3 percent of the total amount of the costs. Projected interest charges and other finance costs may be included if the impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the municipality or county to finance the capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

(20) "System improvements" means capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to "project improvements." (Code 1981, § 36-71-2, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1992, p. 905, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2007, p. 414, § 1/HB 232.)

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

In general. — O.C.G.A. § 36-71-2 was not drafted to allow the terms "municipality," "county," and "governmental entity" to be used interchangeably. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607 (2004).

Cited in Cherokee County v. Greater Atlanta Homebuilders Ass'n, 255 Ga. App. 764, 565 S.E.2d 925 (2002).

36-71-3. Imposition of development impact fees.

(a) Municipalities and counties which have adopted a comprehensive plan containing a capital improvements element are authorized to impose by ordinance development impact fees as a condition of development approval on all development pursuant to and in accordance with the provisions of this chapter. After the transition period provided in this chapter, development exactions for other than project improvements shall be imposed by municipalities and counties only by way of

development impact fees imposed pursuant to and in accordance with the provisions of this chapter.

(b) Notwithstanding any other provision of this chapter, that portion of a project for which a valid building permit has been issued prior to the effective date of a municipal or county development impact fee ordinance shall not be subject to development impact fees so long as the building permit remains valid and construction is commenced and is pursued according to the terms of the permit.

(c) Payment of a development impact fee shall be deemed to be in compliance with any municipal or county requirement for the provision of adequate public facilities or services in regard to the system improvements for which the development impact fee was paid. (Code 1981, § 36-71-3, enacted by Ga. L. 1990, p. 692, § 1.)

JUDICIAL DECISIONS

County ordinance imposing impact fees on new developments only in unincorporated areas. — Because Cherokee County, Georgia lacked the power to impose impact fees on new development in incorporated areas of Cherokee County, the county acted rationally and reasonably by imposing impact fees on new developments only in unincorporated areas. Cherokee County v. Greater Atlanta Homebuilders Ass'n, 255 Ga. App. 764, 565 S.E.2d 925 (2002).

36-71-4. Calculation of fees.

(a) A development impact fee shall not exceed a proportionate share of the cost of system improvements, as defined in this chapter.

(b) Development impact fees shall be calculated and imposed on the basis of service areas.

(c) Development impact fees shall be calculated on the basis of levels of service for public facilities that are adopted in the municipal or county comprehensive plan that are applicable to existing development as well as the new growth and development.

(d) A municipal or county development impact fee ordinance shall provide that development impact fees shall be collected not earlier in the development process than the issuance of a building permit authorizing construction of a building or structure; provided, however, that development impact fees for public facilities described in subparagraph (D) of paragraph (17) of Code Section 36-71-2 may be collected at the time of a development approval that authorizes site construction or improvement which requires public facilities described in subparagraph (D) of paragraph (17) of Code Section 36-71-2.

(e) A municipal or county development impact fee ordinance shall include a schedule of impact fees specifying the development impact fee

for various land uses per unit of development on a service area by service area basis. The ordinance shall provide that a developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs.

(f) A municipal or county development impact fee ordinance shall be adopted in accordance with the procedural requirements of Code Section 36-71-6.

(g) A municipal or county development impact fee ordinance shall include a provision permitting individual assessments of development impact fees at the option of applicants for development approval under guidelines established in the ordinance.

(h) A municipal or county development impact fee ordinance shall provide for a process whereby a developer may receive a certification of the development impact fee schedule or individual assessment for a particular project, which shall establish the development impact fee for a period of 180 days from the date of certification.

(i) A municipal or county development impact fee ordinance shall include a provision for credits in accordance with the requirements of Code Section 36-71-7.

(j) A municipal or county development impact fee ordinance shall include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of Code Section 36-71-8.

(k) A municipal or county development impact fee ordinance may provide for the imposition of a development impact fee for system improvement costs previously incurred by a municipality or county to the extent that new growth and development will be served by the previously constructed system improvements.

(l) A municipal or county development impact fee ordinance may exempt all or part of particular development projects from development impact fees if:

(1) Such projects are determined to create extraordinary economic development and employment growth or affordable housing;

(2) The public policy which supports the exemption is contained in the municipality's or county's comprehensive plan; and

(3) The exempt development project's proportionate share of the system improvement is funded through a revenue source other than development impact fees.

(m) A municipal or county development impact fee ordinance shall provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and in the service area in which the project for which the fees were paid is located.

(n) A municipal or county development impact fee ordinance shall provide that, in the event a building permit is abandoned, credit shall be given for the present value of the development impact fee against future development impact fees for the same parcel of land.

(o) A municipal or county development impact fee ordinance shall provide for a refund of development impact fees in accordance with the requirements of Code Section 36-71-9.

(p) A municipal or county development impact fee ordinance shall provide for appeals from administrative determinations regarding development impact fees in accordance with the requirements of Code Section 36-71-10.

(q) Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

(r) Development impact fees shall be calculated on a basis which is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers. (Code 1981, § 36-71-4, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1993, p. 91, § 36; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2007, p. 414, § 2/HB 232.)

Editor's notes. — Ga. L. 2006, p. 72, § 36/SB 465, which amended this Code section, purported to amend paragraph (k)(3) but actually amended paragraph (l)(3).

JUDICIAL DECISIONS

County ordinance imposing impact fees on new developments only in unincorporated areas. — Because Cherokee County, Georgia lacked the power to impose impact fees on a new development in incorporated areas of Cherokee County, the county acted rationally and reasonably by imposing impact fees on new developments only in unincorporated areas. Cherokee County v. Greater Atlanta Homebuilders Ass'n, 255 Ga. App. 764, 565 S.E.2d 925 (2002).

Agreement requiring prepayment of impact fees. — Agreement between a county and a developer was unenforceable under O.C.G.A. §§ 13-8-1 and 13-8-2 because the agreement violated the prohibition in O.C.G.A. § 36-71-4(d) against the prepayment of impact fees; the agreement calculated the payment of impact fees not in reference to the issuance of building permits but as a sum certain for the purpose of retiring the county's debt for improving the county's water/sewer sys-

tem. Effingham County Bd. of Comm'rs v. Park West Effingham, L.P., 308 Ga. App. 680, 708 S.E.2d 619 (2011).

36-71-5. Development Impact Fee Advisory Committee.

(a) Prior to the adoption of a development impact fee ordinance, a municipality or county adopting an impact fee program shall establish a Development Impact Fee Advisory Committee.

(b) Such committee shall be composed of not less than five nor more than ten members appointed by the governing authority of the municipality or county and at least 50 percent of the membership shall be representatives from the development, building, or real estate industries. An existing planning commission or other existing committee that meets these requirements may serve as the Development Impact Fee Advisory Committee.

(c) The Development Impact Fee Advisory Committee shall serve in an advisory capacity to assist and advise the governing body of the municipality or county with regard to the adoption of a development impact fee ordinance. In that the committee is advisory, no action of the committee shall be considered a necessary prerequisite for municipal or county action in regard to adoption of an ordinance. (Code 1981, § 36-71-5, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2007, p. 414, § 3/HB 232.)

36-71-6. Hearings on proposed fee ordinance.

Prior to the adoption of an ordinance imposing a development impact fee pursuant to this chapter, the governing body of a municipality or county shall cause two duly noticed public hearings to be held in regard to the proposed ordinance. The second hearing shall be held at least two weeks after the first hearing. (Code 1981, § 36-71-6, enacted by Ga. L. 1990, p. 692, § 1.)

36-71-7. Credit for present value of construction accepted by municipality or county from developer.

(a) In the calculation of development impact fees for a particular project, credit shall be given for the present value of any construction of improvements or contribution or dedication of land or money required or accepted by a municipality or county from a developer or his predecessor in title or interest for system improvements of the category for which the development impact fee is being collected. Credits shall not be given for project improvements.

(b) In the event that a developer enters into an agreement with a county or municipality to construct, fund, or contribute system im-

provements such that the amount of the credit created by such construction, funding, or contribution is in excess of the development impact fees which would otherwise have been paid for the development project, the developer shall be reimbursed for such excess construction, funding, or contribution from development impact fees paid by other development located in the service area which is benefited by such improvements. (Code 1981, § 36-71-7, enacted by Ga. L. 1990, p. 692, § 1.)

Law reviews. — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Impact fee credits. — Because O.C.G.A. § 36-71-13(b) permitted an owner and a city to enter into a private development agreement and the agreement unambiguously provided for reimbursement in the form of impact fee credits under O.C.G.A. § 36-71-7(b) and not cash, the trial court properly granted partial summary judgment to the city. Fulton Greens, L.P. v. City of Alpharetta, 272 Ga. App. 459, 612 S.E.2d 491 (2005).

36-71-8. Deposit and expenditure of fees; annual report.

(a) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in one or more interest-bearing accounts. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned and shall be subject to all restrictions placed on the use of development impact fees under the provisions of this chapter. The accounting records shall include the following information:

(1) The accounting records to be maintained shall specify the address of each property which paid development impact fees, the amount of fees paid in each category in which fees were collected, and the date that such fees were paid; and

(2) As to any exemptions granted, the accounting records to be maintained shall specify the address of each property for which exemptions were granted, the reason for which such exemption was granted, and the revenue source from which the exempt development's proportionate share of the system improvements is to be paid.

(b) Expenditures of development impact fees shall be made only for the category of system improvements and in the service area for which the development impact fee was imposed as shown by the capital improvements element and as authorized by this chapter. Development impact fees shall not be used to pay for any purpose that does not

involve system improvements that create additional service available to serve new growth and development.

(c)(1) Development impact fees, collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways, shall be expended to fund, in whole or in part, system improvement projects:

(A) That have been identified in the capital improvements element of the municipality's comprehensive development plan; and

(B) That are chosen by a municipality after consideration of the following factors:

(i) The proximity of the proposed system improvements to developments within the service area which have generated development impact fees collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways; and

(ii) The proposed system improvements which will have the greatest effect on level of service for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways impacted by the developments which have paid such impact fees.

(2) Where the expenditure of development impact fees paid by a development is allocated to system improvements in the general area of such development, through an agreement between the municipality and the developer and such agreement is approved by the governing body, the analysis required by subparagraph (B) of paragraph (1) of this subsection shall not be applicable.

(3) The provisions of this subsection shall only apply to municipalities that have more than 140,000 parcels of land.

(d)(1) As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any development impact fees collected, encumbered, and used during the preceding year by category of public facility and service area.

(2) In municipalities that have more than 140,000 parcels of land, the portion of the annual report relating to development impact fees collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways shall be referred to such municipality's most recently constituted Development Impact Fee Advisory Committee which shall report to the governing body of such municipality any perceived inequities in the expenditure of impact fees collected for roads,

streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways. (Code 1981, § 36-71-8, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 2007, p. 414, § 4/HB 232.)

36-71-9. Refunds.

Any municipality or county which adopts a development impact fee ordinance shall provide for refunds in accordance with the following provisions:

(1) Upon the request of an owner of property on which a development impact fee has been paid, a municipality or county shall refund the development impact fee if capacity is available and service is denied or if the municipality or county, after collecting the fee when service is not available, has failed to encumber the development impact fee or commence construction within six years after the date that the fee was collected. In determining whether development impact fees have been encumbered, development impact fees shall be considered encumbered on a first-in, first-out (FIFO) basis;

(2) When the right to a refund exists due to a failure to encumber development impact fees, the municipality or county shall provide written notice of entitlement to a refund to the feepayor who paid the development impact fee at the address shown on the application for development approval or to a successor in interest who has given notice to the municipality or county of a transfer or assignment of the right or entitlement to a refund and who has provided a mailing address. Such notice shall also be published within 30 days after the expiration of the six-year period after the date that the development impact fees were collected and shall contain the heading "Notice of Entitlement to Development Impact Fee Refund";

(3) An application for a refund shall be made within one year of the time such refund becomes payable under paragraph (1) or (2) of this Code section or within one year of publication of the notice of entitlement to a refund under this Code section, whichever is later;

(4) A refund shall include a refund of a pro rata share of interest actually earned on the unused or excess development impact fee collected;

(5) All refunds shall be made to the feepayor within 60 days after it is determined by a municipality or county that a sufficient proof of claim for a refund has been made; and

(6) The feepayor shall have standing to sue for a refund under the provisions of this chapter if there has been a timely application for a refund and the refund has been denied or has not been made within

one year of submission of the application for refund to the collecting municipality or county. (Code 1981, § 36-71-9, enacted by Ga. L. 1990, p. 692, § 1.)

36-71-10. Appeal of fee determination; arbitration.

(a) A municipality or county which adopts a development impact fee ordinance shall provide for administrative appeals to the governing body or such other body as designated in the ordinance of a determination of the development impact fees for a particular project.

(b) A developer may pay a development impact fee under protest in order to obtain a development approval or building permit, as the case may be. A developer making such payment shall not be estopped from exercising the right of appeal provided by this chapter, nor shall such developer be estopped from receiving a refund of any amount deemed to have been illegally collected.

(c) A municipality or county development impact fee ordinance may provide for the resolution of disputes over the development impact fee by binding arbitration through the American Arbitration Association or otherwise. (Code 1981, § 36-71-10, enacted by Ga. L. 1990, p. 692, § 1.)

36-71-11. Intergovernmental agreements.

Municipalities and counties which are jointly affected by development are authorized to enter into intergovernmental agreements with each other, with authorities, or with the state for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend development impact fees for system improvements, or both, provided that such agreement complies with any applicable state laws. (Code 1981, § 36-71-11, enacted by Ga. L. 1990, p. 692, § 1.)

Law reviews. — For survey article on real property law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 397 (2003).

36-71-12. Existing municipal and county laws to be brought into conformance with chapter.

This chapter shall not repeal any existing laws authorizing a municipality or county to impose fees or require contributions or property dedications for capital improvements; provided, however, that all local ordinances or resolutions imposing development exactions for system improvements on April 4, 1990, shall be brought into conformance with this chapter no later than November 30, 1992. (Code 1981, § 36-71-12, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1992, p. 905, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "April 4, 1990," was substituted for "the effective date of this chapter".

36-71-13. Construction of reasonable project improvements; private agreements between property owners or developers and municipalities and counties; hook-up or connection fees for water or sewer service; applicability of chapter to water authorities.

(a) Nothing in this chapter shall prevent a municipality or county from requiring a developer to construct reasonable project improvements in conjunction with a development project.

(b) Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers and municipalities, counties, or other governmental entities in regard to the construction or installation of system improvements and providing for credits or reimbursements for system improvement costs incurred by a developer including interproject transfers of credits or providing for reimbursement for project improvement costs which are used or shared by more than one development project.

(c) Nothing in this chapter shall limit a municipality, county, or other governmental entity which provides water or sewer service from collecting a proportionate share of the capital cost of water or sewer facilities by way of hook-up or connection fees as a condition of water or sewer service to new or existing users, provided that the development impact fee ordinance of a municipality or county or other governmental entity that collects development impact fees pursuant to this chapter shall include a provision for credit for such hook-up or connection fees collected by the municipality or county to the extent that such hook-up or connection fee is collected to pay for system improvements. Imposition of such hook-up or connection fees by any governmental entity to pay for system improvements either existing or new shall be consistent with the capital improvement element of the comprehensive plan and shall be subject to the approval of each county, municipality, or combination thereof which appoints the governing body of such entity. The adoption, imposition, collection, and expenditure of such fees for system improvements by any governmental entity shall be subject to the same procedures applicable to the adoption, imposition, collection, and expenditure of development impact fees by a county.

(d) Nothing in this chapter shall apply to a water authority created by Act of the General Assembly, as long as such authority is not established as a political subdivision of the State of Georgia but instead acts subject to the approval of a county governing authority. (Code 1981, § 36-71-13, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1992, p. 905, § 3.)

Law reviews. — For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005) and 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Applicability. — Georgia Department of Community Affairs has properly interpreted the second and third sentences of O.C.G.A. § 36-71-13(c) to apply only to "governmental entities," as that term is defined by the Georgia Development Impact Fee Act. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607 (2004).

Private development agreements. — Because O.C.G.A. § 36-71-13(b) permitted an owner and a city to enter into a private development agreement and the agreement unambiguously provided for reimbursement in the form of impact fee credits under O.C.G.A. § 36-71-7(b) and not cash, the trial court properly granted partial summary judgment to the city. Fulton Greens, L.P. v. City of Alpharetta, 272 Ga. App. 459, 612 S.E.2d 491 (2005).

Recoupment of costs. — O.C.G.A. § 36-71-13(c) was clearly designed to allow local governments providing water or sewer service to recoup part of the capital costs of their facilities from new or existing users as a condition of providing service to those users. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607 (2004).

As a municipality providing sewer service, a city was entitled, under O.C.G.A. § 36-71-13(c), to collect a proportionate share of the capital cost of its sewer facilities as a condition of sewer service to new or existing users, without adopting an impact fee ordinance. City of Griffin v. McDaniel, 270 Ga. App. 349, 606 S.E.2d 607 (2004).

CHAPTER 72

ABANDONED CEMETERIES AND BURIAL GROUNDS

Sec.
36-72-1. Legislative findings and intent.
36-72-2. Definitions.
36-72-3. Authority of counties and municipalities to preserve abandoned cemeteries.
36-72-4. Permit required for developing land on which cemetery located.
36-72-5. Application for permit.
36-72-6. Identification and notification of descendants of person in cemetery sought to be developed.
36-72-7. Public hearing on development of abandoned cemetery; time for decision on application for permit.
36-72-8. Issues considered in decision on application for permit.
36-72-9. Establishment of board or commission to review applications in counties exceeding certain population size.
36-72-10. Application fee.
36-72-11. Appeal of decision on application for permit.
36-72-12. Development activities pending appeal.
36-72-13. Inspection to ensure applicant's compliance.
36-72-14. Jurisdiction of superior court; expending private or public funds to mitigate harm to cemetery.
36-72-15. Disinterment and disposition of human remains or burial objects.
36-72-16. Penalties.

Cross references. — Georgia Cemetery and Funeral Services Act of 2000, § 10-14-1 et seq.

36-72-1. Legislative findings and intent.

(a) The care accorded the remains of deceased persons reflects respect and regard for human dignity as well as cultural, spiritual, and religious values. The General Assembly declares that human remains and burial objects are not property to be owned by the person or entity which owns the land or water where the human remains and burial objects are interred or discovered, but human remains and burial objects are a part of the finite, irreplaceable, and nonrenewable cultural heritage of the people of Georgia which should be protected.

(b) It is the intent of the General Assembly that the provisions of this chapter be construed to require respectful treatment of human remains in accord with the equal and innate dignity of every human being and consistent with the identifiable ethnic, cultural, and religious affiliation of the deceased individual as indicated by the method of burial or other historical evidence or reliable information. (Code 1981, § 36-72-1, enacted by Ga. L. 1991, p. 274, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

36-72-2. Definitions.

As used in this chapter, the term:

(1) "Abandoned cemetery" means a cemetery which shows signs of neglect including, without limitation, the unchecked growth of vegetation, repeated and unchecked acts of vandalism, or the disintegration of grave markers or boundaries and for which no person can be found who is legally responsible and financially capable of the upkeep of such cemetery.

(2) "Archeologist" means any person who is:

(A) A member of or meets the criteria for membership in the Society of Professional Archaeologists and can demonstrate experience in the excavation and interpretation of human graves; or

(B) Employed on July 1, 1991, by the state or by any county or municipal governing authority as an archeologist.

(3) "Burial ground" means an area dedicated to and used for interment of human remains. The term shall include privately owned burial plots, individually and collectively, once human remains have been buried therein. The fact that the area was used for burial purposes shall be evidence that it was set aside for burial purposes.

(4) "Burial object" means any item reasonably believed to have been intentionally placed with the human remains at the time of burial or interment or any memorial, tombstone, grave marker, or shrine which may have been added subsequent to interment. Such term also means any inscribed or uninscribed marker, coping, curbing, enclosure, fencing, pavement, shelter, wall, stoneware, pottery, or other grave object erected or deposited incident to or subsequent to interment.

(5) "Cemetery" or "cemeteries" means any land or structure in this state dedicated to and used for interment of human remains. It may be either a burial park for earth interments or a mausoleum for vault or crypt interments or a combination of one or more thereof.

(6) "Descendant" means a person or group of persons related to a deceased human by blood or adoption in accordance with Title 19.

(7) "Genealogist" means a person who traces or studies the descent of persons or families and prepares a probative record of such descent.

(8) "Human remains" means the bodies of deceased human beings in any stage of decomposition, including cremated remains.

(9) "Preserve and protect" means to keep safe from destruction, peril, or other adversity and may include the placement of signs, markers, fencing, or other such appropriate features so as to identify the site as a cemetery or burial ground and may also include the cleaning, maintenance, and upkeep of the site so as to aid in its preservation and protection. (Code 1981, § 36-72-2, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 1992, p. 2508, § 1; Ga. L. 2006, p. 1087, § 7/HB 910.)

Cross references. — Georgia Cemeterians Board Act, § 43-8B-1 et seq.

36-72-3. Authority of counties and municipalities to preserve abandoned cemeteries.

Counties, anywhere within the county boundaries, and municipalities, anywhere within the municipal boundaries, are authorized, jointly and severally, to preserve and protect any abandoned cemetery or any burial ground which the county or municipality determines has been abandoned or is not being maintained by the person who is legally responsible for its upkeep, whether or not that person is financially capable of doing so, to expend public money in connection therewith, to provide for reimbursement of such funds by billing any legally responsible person or levying upon any of his property as authorized by local ordinance, and to exercise the power of eminent domain to acquire any interest in land necessary for that purpose. (Code 1981, § 36-72-3, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 1992, p. 2508, § 2.)

Law reviews. — For annual survey article discussing local government law, see 51 Mercer L. Rev. 397 (1999).

JUDICIAL DECISIONS

Duty of county. — O.C.G.A. § 36-72-3 authorizes but does not compel a county to preserve and protect abandoned cemeteries. Smith v. Pulaski County, 269 Ga. 688, 501 S.E.2d 213 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Persons sentenced to community service may be utilized to assist counties or municipalities in the care of abandoned cemeteries or burial grounds. 1999 Op. Att'y Gen. No. U99-5.

36-72-4. Permit required for developing land on which cemetery located.

No known cemetery, burial ground, human remains, or burial object shall be knowingly disturbed by the owner or occupier of the land on which the cemetery or burial ground is located for the purposes of developing or changing the use of any part of such land unless a permit is first obtained from the governing authority of the municipal corporation or county wherein the cemetery or burial ground is located, which shall have authority to permit such activity except as provided in Code Section 36-72-14. (Code 1981, § 36-72-4, enacted by Ga. L. 1991, p. 924, § 3.)

JUDICIAL DECISIONS

Cited in Smith v. Pulaski County, 269 Ga. 688, 501 S.E.2d 213 (1998).

36-72-5. Application for permit.

Application for a permit shall include, at a minimum, the following information:

(1) Evidence of ownership of the land on which the cemetery or burial ground is located in the form of a legal opinion based upon a title search;

(2) A report prepared by an archeologist stating the number of graves believed to be present and their locations as can be determined from the use of minimally invasive investigation techniques, including remote sensing methods and the use of metal probes, which activities shall not require a permit;

(3) A survey prepared by or under the direction of a registered surveyor showing the location and boundaries of the cemetery or burial ground based on an archeologist's report;

(4) A plan prepared by a genealogist for identifying and notifying the descendants of those buried or believed to be buried in such cemetery. If those buried or believed to be buried are of aboriginal or American Indian descent, the genealogist, in preparing the notification plan, shall consult with the Council on American Indian Concerns created pursuant to Code Section 44-12-280 and shall include in the notification plan not only any known descendants of those presumed buried but also any American Indian tribes as defined in paragraph (2) of Code Section 44-12-260 that are culturally affiliated; and

(5) A proposal for mitigation or avoidance of the effects of the planned activity on the cemetery or burial ground. If the proposal

includes relocation of any human remains or burial objects, the proposal shall specify the method of disinterment, the location and method of disposition of the remains, the approximate cost of the process, and the approximate number of graves affected. (Code 1981, § 36-72-5, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 1992, p. 1790, § 5.)

JUDICIAL DECISIONS

Relocation allowed. — Court properly found that the evidence showed no specific dedication of this property by any of the property's owners for use as a public cemetery and that the evidence did not suggest that the cemetery was used by the public at large as a burial place which supported the granting of the application for relocation. Hughes v. Cobb County, 264 Ga. 128, 441 S.E.2d 406 (1994).

36-72-6. Identification and notification of descendants of person in cemetery sought to be developed.

The applicant shall implement its plan for identifying and locating descendants no later than the date the application is submitted to the governing authority. The governing authority shall review the applicant's plan for identifying and notifying the descendants of the deceased persons and may require as a condition for issuing a permit that the applicant implement additional reasonable attempts to identify and locate descendants. Notice to possible descendants shall include information on how to contact the governing authority and a summary of the rights of descendants under this chapter. The governing authority shall promptly inform any descendant who indicates an interest in the disposition of the human remains and burial objects regarding any proposals for mitigation, the terms of any permit issued, the time and place of any scheduled public hearings, and appeal procedures and events. (Code 1981, § 36-72-6, enacted by Ga. L. 1991, p. 924, § 3.)

JUDICIAL DECISIONS

Cited in Hughes v. Cobb County, 264 Ga. 128, 441 S.E.2d 406 (1994).

36-72-7. Public hearing on development of abandoned cemetery; time for decision on application for permit.

(a) Within 15 days after it is satisfied that all reasonable effort has been made to notify descendants, as provided in Code Section 36-72-6, and following receipt of the recommendations of a board or commission created pursuant to Code Section 36-72-9, the governing authority shall schedule a public hearing at which any interested party or citizen may appear and be given an opportunity to be heard. In addition to the notice required in Code Section 36-72-6, notice of the public hearing

shall be advertised in the legal organ of the jurisdiction once a week for the two consecutive weeks immediately preceding the week in which any such hearing is held.

(b) Within 30 days after the conclusion of the public hearing, the governing authority shall notify the applicant in writing of its decision. The governing authority shall have the authority to deny the application with written reasons therefor, to issue a permit adopting the application in whole or in part, or to issue a permit which may include additional requirements to mitigate the proposed activity's adverse effects on the cemetery or burial ground, including but not limited to relocation of the proposed project, reservation of the cemetery or burial ground as an undeveloped area within the proposed development or use of land, and respectful disinterment and proper disposition of the human remains. The governing authority may adopt the applicant's proposal for mitigation. (Code 1981, § 36-72-7, enacted by Ga. L. 1991, p. 924, § 3.)

JUDICIAL DECISIONS

Consideration of alternatives. — Given that O.C.G.A. § 36-72-7 gives the governing authority the power to adopt the application in whole or in part, or to issue a permit which may include additional requirements, the board of commissioners had the authority to consider alternatives and to issue a permit for disinterment and relocation to the alternate site. Hughes v. Cobb County, 264 Ga. 128, 441 S.E.2d 406 (1994).

36-72-8. Issues considered in decision on application for permit.

The governing authority shall consider the following in making its determination:

(1) The presumption in favor of leaving the cemetery or burial ground undisturbed;

(2) The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;

(3) The economic and other costs of mitigation;

(4) The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects;

(5) The balancing of the applicant's interest in disinterment with the public's and any descendant's interest in the value of the undisturbed cultural and natural environment; and

(6) Any other compelling factors which the governing authority deems relevant. (Code 1981, § 36-72-8, enacted by Ga. L. 1991, p. 924, § 3.)

JUDICIAL DECISIONS

Evidence supported relocation. — There was evidence in the record which supported the trial court's conclusion of fact that, due to lack of maintenance and inappropriate surroundings, relocation would preserve rather than destroy the cultural heritage of the county and the cemetery. Hughes v. Cobb County, 264 Ga. 128, 441 S.E.2d 406 (1994).

36-72-9. Establishment of board or commission to review applications in counties exceeding certain population size.

The governing authority of any county whose population is in excess of 290,000 as established by the United States decennial census of 1980 or any such future census shall be authorized to establish or empower a new or existing commission or board to hear and review any application filed pursuant to Code Section 36-72-5. The board or commission shall conduct a public hearing within 60 days of the filing of an application and shall make a written recommendation to the governing authority no later than 15 days following the public hearing with respect to the sufficiency of the notice to descendants, the plan for mitigation, the disturbance and adverse effects on the cemetery or burial ground, the survey of the cemetery, and plans for disinterment and reinterment. (Code 1981, § 36-72-9, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-10. Application fee.

The governing authority shall be authorized to impose an application fee which shall reflect the cost to the governing authority for processing and reviewing the application including, but not limited to, the cost of hiring an attorney, independent archeologist, and independent surveyor to assist in making recommendations regarding the applicant's plan. Such fee, if imposed, shall not exceed $2,500.00. (Code 1981, § 36-72-10, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-11. Appeal of decision on application for permit.

Should any applicant or descendant be dissatisfied with a decision of the governing authority, he or she, within 30 days of such decision, may file an appeal in the superior court of the county in which the cemetery or burial ground is located in addition to the superior courts enumerated in Code Section 50-13-19. (Code 1981, § 36-72-11, enacted by Ga. L. 1991, p. 924, § 3.)

JUDICIAL DECISIONS

Cited in Hughes v. Cobb County, 264 Ga. 128, 441 S.E.2d 406 (1994).

36-72-12. Development activities pending appeal.

Until the expiration of the time for appeal as set forth in Code Section 36-72-11, the applicant shall not begin or resume activities which comply with the permit issued by the governing authority. If an appeal is filed, the applicant may begin or resume activities which comply with the permit only upon consent of the governing authority and the party seeking judicial review or upon order of the reviewing court for good cause shown. (Code 1981, § 36-72-12, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-13. Inspection to ensure applicant's compliance.

The governing authority or local law enforcement agency shall inspect as necessary to determine whether the applicant has complied with the provisions of this chapter requiring cessation or limitation of activity and with the terms of the permit as issued by the governing authority or as modified by the superior court or reviewing court. (Code 1981, § 36-72-13, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-14. Jurisdiction of superior court; expending private or public funds to mitigate harm to cemetery.

(a) Notwithstanding any provisions of this chapter to the contrary, when any agency, authority, or political subdivision of the state seeks to file an application for a permit under this chapter, the superior court having jurisdiction over the real property wherein the cemetery or burial ground is located shall have exclusive jurisdiction over the permit application. The superior court shall conduct its investigation and determination of the permit in accordance with Code Sections 36-72-6 through 36-72-8.

(b) When activities of an agency, authority, or political subdivision of the state adversely affect an abandoned cemetery or a burial ground, such agency, authority, or political subdivision shall bear the cost of mitigating the harm to the abandoned cemetery or burial ground or reinterring the human remains as a part of the cost of the project and is authorized to expend public funds for such purpose. When activities of a private person, corporation, or other private entity adversely affect an abandoned cemetery or a burial ground, such person, corporation, or other entity shall bear the cost of mitigating the harm to the cemetery or burial ground or reinterring the human remains. The cost of

mitigating the harm to an abandoned cemetery or to a burial ground or reinterring the human remains exposed through vandalism by an unidentified vandal or through erosion may be borne by the governing authority in whose jurisdiction the abandoned cemetery or burial ground is located.

(c) The provisions of this chapter notwithstanding, the Department of Transportation shall not be required to obtain a permit under this chapter unless human remains are to be relocated; provided, however, that the department shall be required to obtain an archaeologist's report, pursuant to paragraph (2) of Code Section 36-72-5, confirming the absence of human remains on the affected property. (Code 1981, § 36-72-14, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 2011, p. 583, § 11/HB 137.)

The 2011 amendment, effective July 1, 2011, added subsection (c).

36-72-15. Disinterment and disposition of human remains or burial objects.

Any disinterment and disposition of human remains or burial objects permitted under this chapter shall be supervised, monitored, or carried out by the applicant's archeologist and shall be done at the expense of the person or entity to whom the permit is issued. (Code 1981, § 36-72-15, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-16. Penalties.

Any person who knowingly fails to comply with the provisions of this chapter shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall pay a fine of not more than $5,000.00 for each grave site disturbed; provided, however, that any person who knowingly violates the provisions of Code Section 36-72-4 shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall be incarcerated for not more than six months and shall pay a fine not less than $5,000.00 for each grave site disturbed. (Code 1981, § 36-72-16, enacted by Ga. L. 1991, p. 924, § 3.)

CHAPTER 73

CONTRACTS FOR REGIONAL FACILITIES

Sec.
36-73-1. Purpose.
36-73-2. Public hearing on proposed contract; notice.
36-73-3. Proposed facility located outside county or municipality; feasibility study.
36-73-4. Impingement upon powers, authority, rights, and duties of sheriffs prohibited.

Editor's notes. — Ga. L. 1995, p. 699, § 2, not codified by the General Assembly, provides that this Act applies with respect to contracts entered into on or after April 18, 1995, but shall not invalidate any contract entered into prior to April 18, 1995.

36-73-1. Purpose.

It is the purpose of this chapter to provide certain conditions, limitations, and restrictions upon the exercise of the powers granted to counties and municipalities to enter into contracts for regional facilities under Article IX, Section IV, Paragraph IV of the Constitution. (Code 1981, § 36-73-1, enacted by Ga. L. 1995, p. 699, § 1.)

36-73-2. Public hearing on proposed contract; notice.

A county or municipality which proposes to enter into a contract under Article IX, Section IV, Paragraph IV of the Constitution shall, prior to entering into such contract, conduct at least one public hearing with respect to such proposed contract. Notice of such public hearing shall be given by a prominent advertisement in a newspaper of general circulation within the county or municipality. The parties proposing to enter into a contract may agree to conduct a joint public hearing in lieu of separate public hearings by each party. The notice of public hearing required in the case of a municipality may be combined with a notice of public hearing for the county within which the municipality is located. (Code 1981, § 36-73-2, enacted by Ga. L. 1995, p. 699, § 1.)

36-73-3. Proposed facility located outside county or municipality; feasibility study.

Where a county or municipality proposes to enter into a contract for a regional facility which will be located outside of such county or municipality and such contract will require the expenditure of public funds of the county or municipality, the county or municipality shall,

prior to entering into the contract, conduct a financial feasibility study of the contract. Such study may be conducted by the county or municipality or the county or municipality may contract with another party for the conducting of the study. Two or more parties proposing to enter into a contract may conduct or contract for a joint financial feasibility study, but in this case the financial feasibility study shall separately address the fiscal concerns of each party to the proposed contract. A financial feasibility study shall at a minimum include a statement of the expected useful life of the regional project and a statement or projection of the costs and benefits to the county or municipality over the entire expected useful life of the project. (Code 1981, § 36-73-3, enacted by Ga. L. 1995, p. 699, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "study" was inserted near the end of the first sentence.

36-73-4. Impingement upon powers, authority, rights, and duties of sheriffs prohibited.

No contract under Article IX, Section IV, Paragraph IV of the Constitution shall in any manner impinge upon the constitutional and statutory powers, authority, rights, and duties granted to the sheriffs of this state prior to the adoption of said Paragraph IV. (Code 1981, § 36-73-4, enacted by Ga. L. 1995, p. 699, § 1.)

CHAPTER 74

LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS

Article 1

General Provisions

Sec.
36-74-1. Short title.
36-74-2. Legislative intent.
36-74-3. Creating or abolishing boards; hearings and fines.

Article 2

Enforcement Boards Created on or after January 1, 2003

36-74-20. Application.
36-74-21. Definitions.
36-74-22. Membership of boards; requirements of members; chairperson; attorney's role.
36-74-23. Initiating of proceedings; time to correct violations; repeat violations; hearings.
36-74-24. Calling of hearings; hearing proceedings.
36-74-25. (Effective until January 1, 2013. See note.) Powers of enforcement boards.
36-74-25. (Effective January 1, 2013. See note.) Powers of enforcement boards.
36-74-26. Administrative fines; public record.
36-74-27. Length of liens.
36-74-28. Appeals to superior court.
36-74-29. Notice required; form of notice.
36-74-30. Other enforcement methods; probable cause for investigation required.

Article 3

Enforcement Boards Created Prior to January 1, 2003

36-74-40. Application of article.
36-74-41. Definitions.
36-74-42. Membership of boards; requirements of members; chairperson; attorney's role.
36-74-43. Initiating of proceedings; time to correct violations; repeat violations; hearings.
36-74-44. Calling of hearings; hearing proceedings; orders.
36-74-45. (Effective until January 1, 2013. See note.) Powers of enforcement boards.
36-74-45. (Effective January 1, 2013. See note.) Powers of enforcement boards.
36-74-46. Administrative fines; public record.
36-74-47. Length of liens.
36-74-48. Appeals to superior court.
36-74-49. Notice required; form of notice.
36-74-50. Other enforcement methods.

Cross references. — State building, plumbing, electrical, and other codes, § 8-2-20 et seq. Building, electrical, and other codes, T. 36, C. 13.

Editor's notes. — Ga. L. 2000, p. 1102, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Inferior Court Training and Assistance Act of 2000.'"

Law reviews. — For note on 2000 enactment of O.C.G.A. §§ 36-74-1 to 36-74-3, see 17 Ga. St. U. L. Rev. 52 (2000).

ARTICLE 1

GENERAL PROVISIONS

36-74-1. Short title.

This chapter shall be known and may be cited as the "Local Government Code Enforcement Boards Act" and is enacted to provide assistance to inferior courts with jurisdiction over county or municipal ordinances. (Code 1981, § 36-74-1, enacted by Ga. L. 2000, p. 1102, § 3; Ga. L. 2003, p. 581, § 2.)

36-74-2. Legislative intent.

It is the intent of this chapter to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist. (Code 1981, § 36-74-2, enacted by Ga. L. 2000, p. 1102, § 3; Ga. L. 2003, p. 581, § 2.)

36-74-3. Creating or abolishing boards; hearings and fines.

(a) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided in this chapter.

(b) A county or a municipality may, by ordinance, adopt an alternate code enforcement system which gives code enforcement boards the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. (Code 1981, § 36-74-3, enacted by Ga. L. 2000, p. 1102, § 3; Ga. L. 2003, p. 581, § 2.)

ARTICLE 2

ENFORCEMENT BOARDS CREATED ON OR AFTER JANUARY 1, 2003

36-74-20. Application.

The provisions of this article shall apply to enforcement boards created on or after January 1, 2003. (Code 1981, § 36-74-20, enacted by Ga. L. 2003, p. 581, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, "January" was substituted for "Jan.".

36-74-21. Definitions.

As used in this article, the term:

(1) "Code enforcement officer" means any person contracted with or employed by a county or municipality who has enforcement authority for health, safety, or welfare requirements and is authorized to issue citations or file formal complaints regarding the same.

(2) "County or municipal codes and ordinances" means zoning ordinances and resolutions, ordinances and resolutions enacting subdivision regulations, environmental ordinances and resolutions, state minimum standard codes provided for in Code Section 8-2-25, ordinances and resolutions enacted pursuant to Code Section 8-2-25, other ordinances and resolutions regulating the development of real property, and ordinances and regulations providing for control of litter and debris, control of junked or abandoned vehicles, and control of overgrown vegetation. Notwithstanding the above, the term "county and municipal codes and ordinances" shall not include:

(A) Those codes and ordinances requiring a permit, unless the alleged violator has failed to secure all necessary valid permits under said codes and ordinances; or

(B) Any local amendments to the state minimum standard codes provided for in Code Section 8-2-25 that have not been adopted in conformity with the requirements of subsection (c) of Code Section 8-2-25.

(3) "Enforcement board" means a local government code enforcement board.

(4) "Local governing body" means the governing authority of the county or municipality, however designated.

(5) "Local governing body attorney" means the legal counselor for the county or municipality.

(6) "Violation involving the health or safety of a third party" means a violation that creates a legitimate concern for the health and safety of a third-party occupant of a dwelling place or that creates an immediate and substantial danger to the environment. (Code 1981, § 36-74-4, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-21, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2012, p. 163, § 1/HB 93.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of paragraph (1) for the former provisions, which read: "'Code inspector' means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance."

36-74-22. Membership of boards; requirements of members; chairperson; attorney's role.

(a) The local governing body may appoint one or more code enforcement boards and legal counsel for the enforcement boards. The local governing body may appoint code enforcement boards consisting of three, five, or seven members. The local governing body may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

(b) Members of the enforcement boards shall be residents of the municipality, in the case of municipal enforcement boards, or residents of the county, in the case of county enforcement boards. In making appointments to an enforcement board, the local governing body shall make good faith efforts to appoint one or more individuals who have experience or expertise relevant to one or more of the county or municipal codes that are within the subject matter jurisdiction of the respective enforcement board, including individuals with property management and litter control experience; provided, however, that the authority and jurisdiction of an enforcement board shall not in any way be limited due to the absence from its membership of one or more individuals with such experience or expertise.

(c)(1) The initial appointments to a seven-member code enforcement board shall be as follows:

(A) Three members appointed for a term of two years each; and

(B) Four members appointed for a term of four years each.

(2) The initial appointments to a five-member code enforcement board shall be as follows:

(A) Two members appointed for a term of two years each; and

(B) Three members appointed for a term of four years each.

(3) The initial appointments to a three-member code enforcement board shall be as follows:

(A) One member appointed for a term of two years; and

(B) Two members appointed for a term of four years each.

(4) Upon the expiration of the initial terms specified in paragraphs (1), (2), and (3) of this subsection all terms shall be for three years.

(5) The local governing body of a county or a municipality may reduce a seven-member code enforcement board to five members, or a five-member code enforcement board to three members, upon the simultaneous expiration of the terms of office of two members of the board.

(6) A member may be reappointed upon approval of the local governing body.

(7) An appointment to fill any vacancy on an enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chairperson, the enforcement board shall declare the member's office vacant, and the local governing body shall promptly fill such vacancy.

(8) The members shall serve in accordance with ordinances of the local governing body and may be suspended and removed for cause as provided in such ordinances for removal of members of boards. A local governing body may, with or without cause, refuse to reappoint any member of an enforcement board at the expiration of his or her term of office.

(d) The members of an enforcement board shall elect a chairperson, who shall be a voting member, from among the members of the board. The presence of four or more members shall constitute a quorum of any seven-member enforcement board, the presence of three or more members shall constitute a quorum of any five-member enforcement board, and the presence of two or more members shall constitute a quorum of any three-member enforcement board. Members shall serve without compensation but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as otherwise provided by law.

(e) The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board but in no case shall the local governing body attorney serve in both capacities. (Code 1981, § 36-74-5, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-22, as redesignated by Ga. L. 2003, p. 581, § 2.)

36-74-23. Initiating of proceedings; time to correct violations; repeat violations; hearings.

(a) It shall be the duty of the code enforcement officer to initiate enforcement proceedings pursuant to the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.

(b) Except as provided in subsections (c) and (d) of this Code section, if a violation of any code or ordinance is found, the code enforcement officer shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officer shall proceed with enforcement through the appropriate court or shall proceed with enforcement through the appropriate code enforcement board. If the code enforcement officer proceeds through a code enforcement board, the code enforcement officer shall notify an enforcement board and request a hearing. The code enforcement board shall schedule a hearing, and written notice of such hearing shall be hand delivered or made as provided in Code Section 36-74-29 to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in Code Section 36-74-29. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code enforcement officer, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(c) If a repeat violation is found, the code enforcement officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, shall notify an enforcement board and request a hearing. The code enforcement board shall schedule a hearing and shall provide written notice pursuant to Code Section 36-74-29. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state.

(d) If the code enforcement officer has substantial reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code enforcement officer shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing. (Code 1981, § 36-74-6, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-23, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2012, p. 163, § 2/HB 93.)

The 2012 amendment, effective July 1, 2012, substituted "code enforcement officer" for "code inspector" throughout this Code section.

36-74-24. Calling of hearings; hearing proceedings.

(a) Upon request of the code enforcement officer, or at such other times as may be necessary, the chairperson of an enforcement board may call a hearing of an enforcement board; a hearing also may be called by written notice signed by at least three members of a

seven-member enforcement board or signed by at least two members of a five-member enforcement board. Minutes shall be kept of all hearings by each enforcement board, and all hearings and proceedings shall be open to the public. The local governing body may provide or assign clerical and administrative personnel to assist the enforcement board in the proper performance of its duties.

(b) Each case before an enforcement board shall be presented by the local governing body attorney or by a code enforcement officer or other member of the administrative staff of the local governing body.

(c) An enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code enforcement officer and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted in this article. The findings and conclusions shall be by motion approved by a majority of those members present and voting, except that at least four members of a seven-member enforcement board, three members of a five-member enforcement board, or two members of a three-member enforcement board must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the enforcement board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance. (Code 1981, § 36-74-7, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-24, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2012, p. 163, § 3/HB 93.)

The 2012 amendment, effective July 1, 2012, substituted "code enforcement officer" for "code inspector" throughout this Code section.

36-74-25. (Effective until January 1, 2013. See note.) Powers of enforcement boards.

Each enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure that each side has an equal opportunity to present evidence and argument in support of its case;

(2) Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the county or by the police department of the municipality or by any other individual authorized by Code Section 24-10-23 to serve subpoenas;

(3) Subpoena evidence to its hearings in the same way as provided in paragraph (2) of this Code section, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance;

(4) Take testimony under oath; and

(5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance. (Code 1981, § 36-74-8, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-25, as redesignated by Ga. L. 2003, p. 581, § 2.)

Editor's notes. — Code Section 36-74-25 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

36-74-25. (Effective January 1, 2013. See note.) Powers of enforcement boards.

Each enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure that each side has an equal opportunity to present evidence and argument in support of its case;

(2) (Effective January 1, 2013. See note.) Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the county or by the police department of the municipality or by any other individual authorized by Code Section 24-13-24 to serve subpoenas;

(3) Subpoena evidence to its hearings in the same way as provided in paragraph (2) of this Code section, with the approval of the court

with jurisdiction over a criminal violator of the county or municipal code or ordinance;

(4) Take testimony under oath; and

(5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance. (Code 1981, § 36-74-8, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-25, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2011, p. 99, § 51/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-13-24" for "Code Section 24-10-23" near the end of the last sentence of paragraph (2). See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Code Section 36-74-25 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

36-74-26. Administrative fines; public record.

(a) An enforcement board, upon notification by the code enforcement officer that an order of the enforcement board has not been complied with by the set time may order the violator to pay an administrative fine in an amount specified in this Code section.

(b)(1) An administrative fine imposed pursuant to this Code section for a violation involving the health or safety of a third party shall not exceed $1,000.00 per day.

(2) An administrative fine imposed pursuant to this Code section for a violation that is not a violation involving the health or safety of a third party shall not exceed a total of $1,000.00.

(3) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

(A) The gravity of the violation;

(B) Any actions taken by the violator to correct the violation; and

(C) Any previous violations committed by the violator.

(4) An enforcement board may reduce a fine imposed pursuant to this Code section.

(c) A certified copy of an order imposing an administrative fine may be recorded in the public records of any county and thereafter shall constitute a lien against the land on which the violation exists and upon

any real or personal property owned by the violator. Upon petition to the superior court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the enforcement board may request the local governing body attorney to foreclose on the lien.

(d) If an environmental court is in existence with jurisdiction over ordinances subject to the jurisdiction of the enforcement board, the violator may object to the fine imposed and submit to the jurisdiction of the environmental court. The case shall be transferred to the environmental court and handled de novo as an ordinance violation. (Code 1981, § 36-74-9, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-26, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2012, p. 163, § 4/HB 93.)

The 2012 amendment, effective July 1, 2012, substituted "code enforcement officer" for "code inspector" in subsection (a).

36-74-27. Length of liens.

No lien imposed under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded. (Code 1981, § 36-74-10, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-27, as redesignated by Ga. L. 2003, p. 581, § 2.)

36-74-28. Appeals to superior court.

An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the superior court. Such an appeal shall be a hearing de novo. An appeal shall be filed within 30 days of the execution of the order to be appealed. (Code 1981, § 36-74-11, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-28, as redesignated by Ga. L. 2003, p. 581, § 2.)

36-74-29. Notice required; form of notice.

(a) All notices required by this article shall be provided to the alleged violator by certified mail or statutory overnight delivery, return receipt

requested; by hand delivery by the sheriff or other law enforcement officer, code enforcement officer, or other person designated by the local governing body; or by leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice.

(b) In addition to providing notice as set forth in subsection (a) of this Code section, at the option of the code enforcement board, notice may also be served by publication or posting, as follows:

(1) Notice may be published once during each week for four consecutive weeks (four publications being sufficient) in the newspaper in which the sheriff's advertisements are printed in the county where the code enforcement board is located. Proof of publication shall be made by affidavit of a duly authorized representative of the newspaper;

(2) If there is no newspaper of general circulation in the county where the code enforcement board is located, three copies of such notice shall be posted for at least 28 days in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse in said county. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting; or

(3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery, mail, or statutory overnight delivery as required under subsection (a) of this Code section. Evidence that an attempt has been made to deliver notice by hand, mail, or statutory overnight delivery as provided in subsection (a) of this Code section, together with proof of publication or posting as provided in this subsection, shall be sufficient to show that the notice requirements of this Code section have been met, without regard to whether or not the alleged violator actually received such notice. (Code 1981, § 36-74-12, enacted by Ga. L. 2000, p. 1102, § 3; Ga. L. 2001, p. 1212, § 5; Code 1981, § 36-74-29, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2012, p. 163, § 5/HB 93.)

The 2012 amendment, effective July 1, 2012, substituted "code enforcement officer" for "code inspector" near the middle of subsection (a).

Editor's notes. — Ga. L. 2001, p. 1212, § 7, not codified by the General Assembly, provides that the Act is applicable with respect to notices delivered on or after July 1, 2001.

36-74-30. Other enforcement methods; probable cause for investigation required.

(a) It is the intent of this article to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in this article shall prohibit a local governing body through its code enforcement officer from enforcing its codes by any other lawful means including criminal and civil proceedings; provided, however, that a local governing body shall not pursue a specific instance of an alleged violation of an ordinance against one violator before both a code enforcement board and a magistrate, municipal, or other court authorized to hear ordinance violations.

(b) No local government is authorized to perform investigations or inspections of residential rental property unless there is probable cause to believe there is or has been a violation or violations of applicable codes, and in no event may a local government require the registration of residential rental property. Conditions which appear to be code violations which are in plain view may form the basis for probable cause. (Code 1981, § 36-74-13, enacted by Ga. L. 2000, p. 1102, § 3; Code 1981, § 36-74-30, as redesignated by Ga. L. 2003, p. 581, § 2; Ga. L. 2003, p. 818, § 2; Ga. L. 2012, p. 163, § 6/HB 93.)

The 2012 amendment, effective July 1, 2012, substituted "code enforcement officer" for "code inspector" in the second sentence of subsection (a).

ARTICLE 3

ENFORCEMENT BOARDS CREATED PRIOR TO JANUARY 1, 2003

36-74-40. Application of article.

The provisions of this article shall apply to enforcement boards created prior to January 1, 2003. (Code 1981, § 36-74-40, enacted by Ga. L. 2003, p. 581, § 2.)

36-74-41. Definitions.

As used in this article, the term:

(1) "Code inspector" means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

(2) "County or municipal codes and ordinances" means zoning ordinances and resolutions, ordinances and resolutions enacting subdivision regulations, environmental ordinances and resolutions, state minimum standard codes provided for in Code Section 8-2-25,

ordinances and resolutions enacted pursuant to Code Section 8-2-25, other ordinances and resolutions regulating the development of real property, and ordinances and regulations providing for control of litter and debris, control of junked or abandoned vehicles, and control of overgrown vegetation. Notwithstanding the above, the term "county and municipal codes and ordinances" shall not include:

(A) Those codes and ordinances requiring a permit, unless the alleged violator has failed to secure all necessary valid permits under said codes and ordinances; or

(B) Any local amendments to the state minimum standard codes provided for in Code Section 8-2-25 that have not been adopted in conformity with the requirements of subsection (c) of Code Section 8-2-25.

(3) "Enforcement board" means a local government code enforcement board.

(4) "Local governing body" means the governing authority of the county or municipality, however designated.

(5) "Local governing body attorney" means the legal counselor for the county or municipality.

(6) "Repeat violation" means any violation of county or municipal codes or ordinances by an owner or co-owner whom the enforcement board has previously found to be in violation of a code or ordinance within one year prior to such violation.

(7) "Violation involving the health or safety of a third party" means a violation that creates a legitimate concern for the health and safety of a third-party occupant of a dwelling place or that creates an immediate and substantial danger to the environment or members of the community at large, especially minor children. (Code 1981, § 36-74-41, enacted by Ga. L. 2003, p. 581, § 2.)

36-74-42. Membership of boards; requirements of members; chairperson; attorney's role.

(a) The local governing body may appoint one or more code enforcement boards and legal counsel for the enforcement boards. The local governing body may appoint code enforcement boards consisting of three, five, or seven members. The local governing body may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

(b) Members of the enforcement boards shall be residents of the municipality, in the case of municipal enforcement boards, or residents of the county, in the case of county enforcement boards. In making

appointments to an enforcement board, the local governing body shall make good faith efforts to appoint one or more individuals who have experience or expertise relevant to one or more of the county or municipal codes that are within the subject matter jurisdiction of the respective enforcement board, including individuals with property management and litter control experience; provided, however, that the authority and jurisdiction of an enforcement board shall not in any way be limited due to the absence from its membership of one or more individuals with such experience or expertise.

(c)(1) The initial appointments to a seven-member code enforcement board shall be as follows:

(A) Three members appointed for a term of two years each; and

(B) Four members appointed for a term of four years each.

(2) The initial appointments to a five-member code enforcement board shall be as follows:

(A) Two members appointed for a term of two years each; and

(B) Three members appointed for a term of four years each.

(3) The initial appointments to a three-member code enforcement board shall be as follows:

(A) One member appointed for a term of two years; and

(B) Two members appointed for a term of four years each.

(4) Upon the expiration of the initial terms specified in paragraphs (1), (2), and (3) of this subsection all terms shall be for three years.

(5) The local governing body of a county or a municipality may reduce a seven-member code enforcement board to five members, or a five-member code enforcement board to three members, upon the simultaneous expiration of the terms of office of two members of the board.

(6) A member may be reappointed upon approval of the local governing body.

(7) An appointment to fill any vacancy on an enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chairperson, the enforcement board shall declare the member's office vacant, and the local governing body shall promptly fill such vacancy.

(8) The members shall serve in accordance with ordinances of the local governing body and may be suspended and removed for cause as provided in such ordinances for removal of members of boards. A local

governing body may, with or without cause, refuse to reappoint any member of an enforcement board at the expiration of his or her term of office.

(d) The members of an enforcement board shall elect a chairperson, who shall be a voting member, from among the members of the board. The presence of four or more members shall constitute a quorum of any seven-member enforcement board, the presence of three or more members shall constitute a quorum of any five-member enforcement board, and the presence of two or more members shall constitute a quorum of any three-member enforcement board. Members shall serve without compensation but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as otherwise provided by law.

(e) The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board but in no case shall the local governing body attorney serve in both capacities. (Code 1981, § 36-74-42, enacted by Ga. L. 2003, p. 581, § 2.)

36-74-43. Initiating of proceedings; time to correct violations; repeat violations; hearings.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings pursuant to the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.

(b) Except as provided in subsections (c) and (d) of this Code section, if a violation of any code or ordinance is found, the code inspector shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall proceed with enforcement through the appropriate court or shall proceed with enforcement through the appropriate code enforcement board. If the code inspector proceeds through a code enforcement board, the code inspector shall notify an enforcement board and request a hearing. The code enforcement board shall schedule a hearing, and written notice of such hearing shall be hand delivered or made as provided in Code Section 36-74-49 to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in Code Section 36-74-49. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(c) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to

correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify an enforcement board and request a hearing. The code enforcement board shall schedule a hearing and shall provide written notice pursuant to Code Section 36-74-49. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state.

(d) If the code inspector has substantial reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing. (Code 1981, § 36-74-43, enacted by Ga. L. 2003, p. 581, § 2.)

36-74-44. Calling of hearings; hearing proceedings; orders.

(a) Upon request of the code inspector, or at such other times as may be necessary, the chairperson of an enforcement board may call a hearing of an enforcement board; a hearing also may be called by written notice signed by at least three members of a seven-member enforcement board or signed by at least two members of a five-member enforcement board. Minutes shall be kept of all hearings by each enforcement board, and all hearings and proceedings shall be open to the public. The local governing body may provide or assign clerical and administrative personnel to assist the enforcement board in the proper performance of its duties.

(b) Each case before an enforcement board shall be presented by the local governing body attorney or by a code inspector or other member of the administrative staff of the local governing body.

(c) An enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order to comply or an order to pay an administrative fine consistent with powers granted in this article. The findings and conclusions and any order imposed shall be by motion approved by a majority of those members present and voting, except that at least four members of a seven-member enforcement board, three members of a five-member enforcement board, or two members of a three-member enforcement board must vote in order for the action to be official.

(e) An order to comply shall include notice that it must be complied with by a specified date and that an administrative fine may be imposed if the order is not complied with by such date.

(f) An order to pay a fine shall specify the amount of the fine as determined and voted upon by the enforcement board, as well as the date and time the fine is due. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchaser, successor in interest, or assign if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, and subsequent purchaser, successor in interest, or assign. If an order is recorded in the public records pursuant to this subsection and the fine is paid by the date and time specified in the order, the enforcement board shall issue an order acknowledging that the fine has been paid in full and such order shall be recorded in the public records. A hearing is not required to issue such an order acknowledging the payment of a fine.

(g) The enforcement board may issue an order to pay a fine against the violator if the cited violation was not corrected within the time specified on the code inspector's notice or if an order to comply was not satisfied within the time specified in the order, even if said violation was corrected and brought into compliance prior to the hearing at which the fine is imposed. (Code 1981, § 36-74-44, enacted by Ga. L. 2003, p. 581, § 2.)

36-74-45. (Effective until January 1, 2013. See note.) Powers of enforcement boards.

Each enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure that each side has an equal opportunity to present evidence and argument in support of its case;

(2) Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the county or by the police department of the municipality or by any other individual authorized by Code Section 24-10-23 to serve subpoenas;

(3) Subpoena evidence to its hearings in the same way as provided in paragraph (2) of this Code section, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance;

(4) Take testimony under oath; and

(5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance. (Code 1981, § 36-74-45, enacted by Ga. L. 2003, p. 581, § 2.)

Editor's notes. — Code Section 36-74-45 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

36-74-45. (Effective January 1, 2013. See note.) Powers of enforcement boards.

Each enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure that each side has an equal opportunity to present evidence and argument in support of its case;

(2) (Effective January 1, 2013. See note.) Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance. Subpoenas may be served by the sheriff, marshal, or police department of the county or by the police department of the municipality or by any other individual authorized by Code Section 24-13-24 to serve subpoenas;

(3) Subpoena evidence to its hearings in the same way as provided in paragraph (2) of this Code section, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance;

(4) Take testimony under oath; and

(5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance. (Code 1981, § 36-74-45, enacted by Ga. L. 2003, p. 581, § 2; Ga. L. 2011, p. 99, § 52/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-13-24" for "Code Section 24-10-23" near the end of the last sentence of paragraph (2). See editor's note for applicability.

Editor's notes. — Code Section 36-74-45 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

36-74-46. Administrative fines; public record.

(a)(1) An administrative fine imposed pursuant to this Code section for a violation involving the health or safety of a third party shall not exceed $1,000.00 per day.

(2) An administrative fine imposed pursuant to this Code section for a violation that is not a violation involving the health or safety of a third party shall not exceed a total of $1,000.00.

(3) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

(A) The gravity of the violation;

(B) Any actions taken by the violator to correct the violation; and

(C) Any previous violations committed by the violator.

(4) An enforcement board may reduce a fine imposed pursuant to this Code section.

(b) A certified copy of an order imposing an administrative fine may be recorded in the public records of any county and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the superior court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the enforcement board may request the local governing body attorney to foreclose on the lien. (Code 1981, § 36-74-46, enacted by Ga. L. 2003, p. 581, § 2.)

36-74-47. Length of liens.

No lien imposed under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded. (Code 1981, § 36-74-47, enacted by Ga. L. 2003, p. 581, § 2.)

36-74-48. Appeals to superior court.

An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the superior court

of the county in which the subject property is located. Such an appeal shall be in the form of a writ of certiorari governed by Chapter 4 of Title 5 and shall be heard on the record. An appeal shall be filed within 30 days of the execution of the order to be appealed. (Code 1981, § 36-74-48, enacted by Ga. L. 2003, p. 581, § 2.)

36-74-49. Notice required; form of notice.

(a) All notices required by this article shall be provided to the alleged violator by certified mail or statutory overnight delivery, return receipt requested; by hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body; by leaving the notice at the violator's usual place of residence with any person residing therein who is over 15 years of age and informing such person of the contents of the notice; or by leaving the notice at the violator's usual place of business with a manager or other upper-level employee who is over 15 years of age and informing such person of the contents of the notice.

(b) In addition to providing notice as set forth in subsection (a) of this Code section, at the option of the code enforcement board, notice may also be served by publication or posting, as follows:

(1) Notice may be published once during each week for four consecutive weeks (four publications being sufficient) in the newspaper in which the sheriff's advertisements are printed in the county where the code enforcement board is located. Proof of publication shall be made by affidavit of a duly authorized representative of the newspaper;

(2) If there is no newspaper of general circulation in the county where the code enforcement board is located, three copies of such notice shall be posted for at least 28 days in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse in said county. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting; or

(3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery, mail, or statutory overnight delivery as required under subsection (a) of this Code section. Evidence that an attempt has been made to deliver notice by hand, mail, or statutory overnight delivery as provided in subsection (a) of this Code section, together with proof of publication or posting as provided in this subsection, shall be sufficient to show that the notice requirements of this Code section have been met, without regard to whether or not the alleged violator actually received such notice. (Code 1981, § 36-74-49, enacted by Ga. L. 2003, p. 581, § 2.)

36-74-50. Other enforcement methods.

It is the intent of this article to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in this article shall prohibit a local governing body through its code inspector from enforcing its codes by any other lawful means including criminal and civil proceedings; provided, however, that a local governing body shall not pursue a specific instance of an alleged violation of an ordinance against one violator before both a code enforcement board and a magistrate, municipal, or other court authorized to hear ordinance violations. (Code 1981, § 36-74-50, enacted by Ga. L. 2003, p. 581, § 2.)

CHAPTER 75

WAR ON TERRORISM LOCAL ASSISTANCE

Sec.
36-75-1. Short title.
36-75-2. Legislative authority; purpose.
36-75-3. Definitions.
36-75-4. Public safety and judicial facilities authorities created for each county and municipality; joint authority; filing with Secretary of State.
36-75-5. Management by board of directors; membership; procedures.
36-75-6. Quorum.
36-75-7. Power of authority.
36-75-8. Bonds and notes; expenditure of revenue.
36-75-9. Responsibility for bonds and obligations.
36-75-10. Construction.
36-75-11. Resolutions and referendums required prior to issuance of bonded indebtedness for new projects; exclusions.
36-75-12. Authorities with maximum amount of outstanding bonded indebtedness to obtain approval by resolution and referendum prior to issuing additional bonds.
36-75-13. Jurisdictions with activated public safety and judicial facilities authorities prohibited from also activating joint public safety and judicial facilities authority.

Cross references. — Domestic terrorism, § 16-4-10 et seq. "Bioterrorism" and "Public health emergency" defined, § 31-12-1.1.

36-75-1. Short title.

This chapter shall be known and may be cited as the "War on Terrorism Local Assistance Act." (Code 1981, § 36-75-1, enacted by Ga. L. 2003, p. 862, § 1; Ga. L. 2004, p. 631, § 36.)

36-75-2. Legislative authority; purpose.

This chapter is enacted pursuant to authority granted to the General Assembly by the Constitution of Georgia. Each authority created by this chapter is created for nonprofit and public purposes; and it is found, determined, and declared that the creation of each such authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter. For such reasons, the state covenants the holders of the bonds issued under this chapter that such authority shall be required to pay no taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others; or upon its activities

in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise; and that the bonds of such authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority. (Code 1981, § 36-75-2, enacted by Ga. L. 2003, p. 862, § 1.)

36-75-3. Definitions.

As used in this chapter, the term:

(1) "Authority" means each public corporation created pursuant to this chapter.

(2) "Cost of project" means all costs of site preparation and other start-up costs; all costs of construction; all costs of real and personal property required for the purposes of the project and facilities related thereto, including land and any rights or undivided interest therein, easements, franchises, fees, permits, approvals, licenses, and certificates and the securing of such permits, approvals, licenses, and certificates, and all machinery and equipment, including motor vehicles which are used for project functions; financing charges and interest prior to and during construction and during such additional period as the authority may reasonably determine to be necessary for the placing of the project in operation; costs of engineering, architectural, and legal services; cost of plans and specifications and all expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incidental to the financing authorized in this chapter. The costs of any project may also include funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority for the operation of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds or notes issued under this chapter for such project.

(3) "County" means any county of this state or a governmental entity formed by the consolidation of a county and one or more municipal corporations.

(4) "Detention facilities" means facilities used or to be used for the incarceration of adult and juvenile offenders and juveniles subject to

the jurisdiction of the juvenile court and administration and support structures for such facilities.

(5) "Governing body" means the elected or duly appointed officials constituting the governing body of each county and municipal corporation in the state.

(6) "Judicial facilities" means facilities used or to be used for the administration of justice and related activities, including all adult and juvenile courts, prosecutorial and public defender services, and their respective administrative and support structures.

(7) "Municipal corporation" means any incorporated municipality in this state.

(8) "Project" means the acquisition, construction, equipping, operation, maintenance, and repairing of county or municipal corporation judicial, detention, or public safety facilities.

(9) "Public safety facilities" means facilities used or to be used by or in direct support of management and operation of homeland security, police, fire, rescue, and emergency medical services. (Code 1981, § 36-75-3, enacted by Ga. L. 2003, p. 862, § 1.)

36-75-4. Public safety and judicial facilities authorities created for each county and municipality; joint authority; filing with Secretary of State.

(a) There is created in and for each county and municipal corporation in this state a public body corporate and politic, to be known as the "public safety and judicial facilities authority" of such county. No authority shall transact any business or exercise any powers under this chapter until the governing body of the county or municipal corporation, as the case may be, by proper ordinance or resolution, declares that there is a need for an authority to function in the county or municipal corporation and declares that such jurisdiction is at the time of such ordinance or resolution imposing a sales tax levied for the purposes of a metropolitan area system of public transportation.

(b) Any number of counties or municipal corporations or a combination of counties and municipal corporations may jointly form an authority to be known as the "joint public safety and judicial facilities authority" for such counties or municipal corporations or both. No authority shall transact any business or exercise any powers under this chapter until the governing authority of each county and municipal corporation involved declare, by ordinance or resolution, that there is a need for an authority to function and declare that such jurisdiction is at the time of such ordinance or resolution imposing a sales tax levied for the purposes of a metropolitan area system of public transportation and

until the governing authority of each county and municipal corporation approves an agreement with the other counties or municipal corporations for the activation of an authority and such agreement is executed.

(c) A copy of such ordinances, resolutions, and agreements shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under this chapter. (Code 1981, § 36-75-4, enacted by Ga. L. 2003, p. 862, § 1; Ga. L. 2006, p. 72, § 36/SB 465.)

36-75-5. Management by board of directors; membership; procedures.

Control and management of the authority shall be vested in a board of directors whose members shall be residents of the county or municipal corporation, as applicable. Directors shall be appointed, and may be reappointed, for terms of four years. The resolution or ordinance activating the authority shall state the number of directors and the appointing authority for each. No member of the governing authority of a county or municipal corporation that activates an authority is eligible to be appointed as a director while serving a term of office as a member of the governing authority of such county or municipal corporation. The directors shall elect one of their members as chairperson and another as vice chairperson and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may be a director. The directors shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties. The directors may make bylaws and regulations for the governing of the authority and may delegate to one or more of the officers, agents, and employees of the authority such powers and duties as may be deemed necessary and proper. (Code 1981, § 36-75-5, enacted by Ga. L. 2003, p. 862, § 1.)

36-75-6. Quorum.

A majority of the directors shall constitute a quorum for the transaction of business of the authority. However, any action with respect to any project of the authority must be approved by the affirmative vote of a majority of the directors. (Code 1981, § 36-75-6, enacted by Ga. L. 2003, p. 862, § 1.)

36-75-7. Power of authority.

Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To acquire, construct, improve, or modify, to place into operation, and to operate or cause to be placed into operation, either as owner of all or of any part in common with others, a project or projects within the political subdivision in which the authority is activated and within other political subdivisions, and to pay all or part of the cost of any such project or projects from the proceeds of revenue bonds of the authority or from any contribution or loans by persons, firms, or corporations or any other contribution, all of which the authority is authorized to receive, accept, and use;

(4) To acquire, in its own name, by purchase on such terms and conditions and in such manner as it may deem proper or by gift, grant, lease, or otherwise, real property or rights and easements therein and franchises and personal property necessary or convenient for its corporate purposes, which purposes shall include, but shall not be limited to, the constructing or acquiring of a project, the improving, extending, adding to, reconstructing, renovating, or remodeling of any project or part thereof already constructed or acquired, or demolition to make room for such project or any part thereof, and to insure the same against any and all risks as such insurance may, from time to time, be available; the authority may also use such property, rent or lease the same to or from others, make contracts with respect to the use thereof, or sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner which the authority deems to the best advantage of itself and its purposes; provided, however, that the powers to acquire, use, and dispose of property as set forth in this paragraph shall include the power to acquire, use, and dispose of any interest in such property, whether divided or undivided, which acquisition may result in the ownership of such property or any part thereof in common with any other party or parties, public or private; and title to any such property of the authority, however, shall be held by the authority exclusively for the benefit of the public;

(5) To make contracts and leases and to execute all instruments necessary or convenient, including contracts for construction of projects and leases of projects or contracts with respect to the use of projects which it causes to be acquired or constructed, provided that all private persons, firms, and corporations, this state, and all political subdivisions, departments, instrumentalities, or agencies of the state or of any local government are authorized to enter into contracts, leases, or agreements with the authority upon such terms and for such purposes as they deem advisable; and without limiting the generality of the above, authority is specifically granted to

counties and municipal corporations and to the authority to enter into contracts, lease agreements, or other undertakings relative to the furnishing of project activities and facilities or either of them by the authority to such political subdivisions and by such political subdivisions to the authority for a term not exceeding 50 years;

(6) To exercise any one or more of the powers, rights, and privileges conferred by this Code section either alone or jointly or in common with one or more other public or private parties or public and private parties; in any such exercise of such powers, rights, and privileges jointly or in common with others with respect to the construction, operation, and maintenance of project facilities, the authority may own an undivided interest in such facilities with any other party with which it may jointly or in common exercise the rights and privileges conferred by this chapter; the authority may enter into an agreement or agreements with respect to any such project facility with the other party or parties participating therein; any such agreement may contain such terms, conditions, and provisions, consistent with this chapter, as the parties thereto shall deem to be in their best interests; any such agreement may include, but need not be limited to, provisions for the construction, operation, and maintenance of such project facility by any one or more party of the parties to such agreement, which party or parties shall be designated in or pursuant to such agreement as agent or agents on behalf of itself and one or more of the other parties thereto, or by such other means as may be determined by the parties thereto, and may include provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements, and disposals with respect to such facility; in carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties; provided, however, that the agent shall act for the benefit of the public; notwithstanding anything contained in any other law to the contrary, pursuant to the terms of any such agreement, the authority may delegate its powers and duties with respect to the construction, operation, and maintenance of such facility to the party acting as agent; and all actions taken by such agent in accordance with the provisions of such agreement may be binding upon the authority without further action or approval of the authority;

(7) To extend credit or make loans to any person, firm, corporation, or other industrial entity for the planning, design, construction, acquisition, or carrying out of any project, which credit or loans shall be secured by loan agreements, mortgages, security agreements,

contracts, and all other instruments or fees or charges, upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provision for the establishment and maintenance of reserves and insurance funds, and in the exercise of powers granted by this Code section in connection with a project for such person, firm, corporation, or other industrial entity, to require the inclusion in any contract, loan agreement, security agreement, or other instrument of such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(8) To acquire, accept, or retain equitable interests, security interests, or other interest in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(9) To accept, receive, and administer gifts, grants, appropriations, and donations of money, materials, and property of any kind, including loans and grants from the United States of America, this state, or a unit of local government or any of their agencies, departments, authorities, or instrumentalities upon such terms and conditions as the United States of America, this state, or a unit of local government or any of their agencies, departments, authorities, or instrumentalities shall impose; to administer trusts; and to sell, lease, transfer, convey, appropriate, and pledge any and all of its property and assets;

(10) To invest any accumulation of its funds in any fund or reserve in any manner that public funds of this state or its political subdivisions may be invested;

(11) To do any and all things necessary or proper for the accomplishment of the objectives of this chapter and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state, including the power to employ professional and administrative staff and personnel and to retain legal, engineering, fiscal, accounting, and other professional services; the power to purchase all kinds of insurance, including, without limitation, insurance against tort liability and against risks of damage to property; the power to borrow money for any of the corporate purposes of the authority; the power to indemnify and hold harmless any parties contracting with the authority or its agents from damage to persons or property; and the power to act as self-insurer with respect to any loss or liability; provided, however, that obligations of the authority other than revenue bonds, for which provision is made in this chapter, shall be payable from the general funds of the authority and shall not be a charge against any special fund allocated to the payment of revenue bonds;

(12) To mortgage, convey, pledge, or assign any properties, revenues, income, tolls, charges, or fees owned or received by the authority;

(13) To borrow money and issue its revenue bonds and bond anticipation notes from time to time and to use the proceeds thereof for the purpose of paying all or part of the cost of any project, including the cost of extending, adding to, or improving such project, or for the purpose of refunding any such bonds of the authority theretofore issued; and to otherwise carry out the purposes of this chapter and to pay all other costs of the authority incident to, or necessary and appropriate to, such purposes, including the providing of funds to be paid into any fund or funds to secure such bonds and notes, provided that all such bonds and notes shall be issued in accordance with the procedures and subject to the limitations set forth in Code Section 36-63-9; provided, however, that the maximum aggregate amount of bonds issued shall be $50 million; and

(14) As security for repayment of authority obligations, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of such authority and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property of the authority upon default on such obligations either in payment of principal or interest or in the performance of any term or condition contained in such agreement or indenture; this state, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein waives any right which it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered, and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof. (Code 1981, § 36-75-7, enacted by Ga. L. 2003, p. 862, § 1; Ga. L. 2006, p. 72, § 36/SB 465.)

36-75-8. Bonds and notes; expenditure of revenue.

(a) Subject to the limitations and procedures provided by this Code section, the obligations of any authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to secure obligations, security agreements, or mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority. The authority, in such instruments, may provide for the pledging of all or any part of its revenues, income, or charges and for the mortgaging, encumbering, or conveying of all or any part of its real or personal property; may

covenant against pledging any or all of its revenues, income, or charges; and may further provide for the disposition of proceeds realized from the sale of any bonds and bond anticipation notes, for the replacement of lost, destroyed, stolen, or mutilated bonds and notes, and for the payment and redemption of such bonds and notes. Similarly, subject to the limitations and procedures of this Code section, undertakings of an authority may prescribe the procedure by which bondholders and noteholders may enforce rights against the authority and provide for rights upon breach of any covenant, condition, or obligation of the authority. Bonds, resolutions, trust indentures, mortgages, or deeds to secure obligations executed by an authority and bond anticipation notes executed by an authority may contain such provisions not otherwise contrary to law as the authority shall deem necessary or desirable.

(b) The proceeds derived from the sale of all bonds and bond anticipation notes issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project, including the cost of extending, financing, adding to, or improving such project, or for the purpose of refunding any bond anticipation notes issued in accordance with this chapter or refunding any previously issued bonds of the authority.

(c) All bonds and bond anticipation notes issued by an authority shall be revenue obligations of such authority and may be made payable out of any revenues or other receipts, funds, or moneys of the authority, subject only to any agreements with the holders of other bonds or bond anticipation notes or to particular security agreements pledging any particular revenues, receipts, funds, or moneys.

(d) Issuance by an authority of one or more series of bonds or bond anticipation notes for one or more purposes shall not preclude it from issuing other bonds or notes in connection with the same project or with any other projects, but the proceeding wherein any subsequent bonds or bond anticipation notes shall be issued shall recognize and protect any prior pledge or mortgage made in any prior security agreement or made for any prior issue of bonds or bond anticipation notes, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds or bond anticipation notes on a parity with such prior issue.

(e) An authority shall have the power and is authorized, whenever revenue bonds of the authority have been validated as provided in this chapter, to issue, from time to time, its notes in anticipation of the issuance of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes only to provide funds which would otherwise be provided by the issuance of

the bonds as validated. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public or private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any such resolution or resolutions; and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of the notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

(f) The interest rate on or rates to be borne by any bonds, notes, or other obligations issued by the authority shall be fixed by the board of directors of the authority. Any limitations with respect to interest rates found in Article 3 of Chapter 82 of this title or in the usury laws of this state shall not apply to obligations issued under this chapter.

(g) All revenue bonds issued by an authority under this chapter shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, except as provided in subsection (f) of this Code section and except as specifically set forth below in this subsection:

(1) Revenue bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide;

(2) Revenue bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the judicial circuit in which the issuing authority is located may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state; and

(3) In lieu of specifying the rate or rates of interest which revenue bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General and the notice to the public of the time, place, and date of the validation hearing may state that the bonds, when issued, will bear interest at a rate not exceeding a maximum per annum rate of interest specified in such notices or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the notices; provided, however, that nothing contained in this paragraph shall be construed as prohibiting or restricting the

right of the authority to sell such bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices. (Code 1981, § 36-75-8, enacted by Ga. L. 2003, p. 862, § 1.)

36-75-9. Responsibility for bonds and obligations.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the State of Georgia or of any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of this state or of any such county, municipal corporation, or political subdivision. All such bonds and obligations shall be payable solely from the revenues therein pledged to such payment, including pledged rentals, sales proceeds, insurance proceeds, and condemnation awards; and no holder or holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of this state or of any county, municipal corporation, or political subdivision thereof, nor to enforce the payment thereof against any property of the state or of any such county, municipal corporation, or political subdivision. (Code 1981, § 36-75-9, enacted by Ga. L. 2003, p. 862, § 1.)

36-75-10. Construction.

This chapter shall be liberally construed to effect the purposes hereof. Sale or issuance of bonds by any authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008," or any other law. No proceeding or publication not required in this chapter shall be necessary to the performance of any act authorized in this chapter, nor shall any such act be subject to referendum. (Code 1981, § 36-75-10, enacted by Ga. L. 2003, p. 862, § 1; Ga. L. 2008, p. 381, § 11/SB 358.)

36-75-11. Resolutions and referendums required prior to issuance of bonded indebtedness for new projects; exclusions.

(a) On and after May 24, 2007, no public safety and judicial facilities authority created and activated by a single county pursuant to this chapter shall be authorized to issue bonds for new projects unless a resolution approving such projects passed by a majority vote of the governing authority of the county that created and activated such authority was ratified by the electors of the county in a referendum.

(b) The proceeds of bonds issued by a public safety and judicial facilities authority created and activated by a single county pursuant to

this chapter and any interest on such proceeds shall be used only for the projects set forth in the resolution approving the issuance of such bonds or for debt service on such bonds.

(c) Any authority other than the type of authority defined in paragraph (1) of Code Section 36-75-3:

(1) Which is authorized by general or local Act to operate and issue bonds in a single county that has activated or that activates a public safety and judicial facilities authority pursuant to this chapter; and

(2) Which constructs or operates buildings or facilities for use by any department, agency, division, or commission of any county that has activated or that activates a public safety and judicial facilities authority pursuant to this chapter

shall obtain approval by resolution and referendum as provided in this Code section prior to issuing bonds for any new buildings, facilities, or real property or improvements to existing buildings, facilities, or real property and shall be bound to such resolution as provided in subsection (b) of this Code section.

(d) Subsections (a), (b), and (c) of this Code section shall apply only to the issuance of bonds the principal and interest of which will be repaid, directly or indirectly, in whole or in part, through funds of the county by agreement between the county and:

(1) A public safety and judicial facilities authority created and activated pursuant to this chapter; or

(2) Any authority other than the type of authority defined in paragraph (1) of Code Section 36-75-3 that meets the conditions set forth in paragraphs (1) and (2) of subsection (c) of this Code section.

(e) The provisions of this Code section shall not apply under any circumstances to the issuance of "recovery zone economic development bonds" and "recovery zone facility bonds" as such terms are defined in Section 1401 of the federal American Recovery and Reinvestment Act of 2009. (Code 1981, § 36-75-11, enacted by Ga. L. 2007, p. 421, § 1/HB 181; Ga. L. 2010, p. 4, § 2/HB 203.)

The 2010 amendment, effective May 7, 2010, substituted "bonds" for "bonded indebtedness" in the middle of subsection (a); substituted the present provisions of subsection (b) for the former provisions, which read: "If a public safety and judicial facilities authority created and activated by a single county pursuant to this chapter desires to fund multiple projects in a bond issue, such projects shall be ranked in the order they will be funded after approval by the governing authority and ratification by the electors under this Code section. Such order of funding shall be binding on the public safety and judicial facilities authority and such projects shall be funded in the order approved unless a different order is submitted to the governing authority for approval and electors for ratification."; in subsection (c), substituted "issue bonds" for "incur bonded indebtedness" near the beginning

of paragraph (c)(1), and in the ending undesignated paragraph, substituted "buildings, facilities, or real property" for "buildings or facilities" twice and added "and shall be bound to such resolution as provided in subsection (b) of this Code section" at the end; and added subsections (d) and (e).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, "May 24, 2007" was substituted for "the effective date of this Code section" in subsection (a).

JUDICIAL DECISIONS

Constitutionality. — War on Terrorism Local Assistance Act, O.C.G.A. § 36-75-1 et seq., is not unconstitutional because the Act does not violate the uniform terms and conditions provision for development authorities in Ga. Const. 1983, Art. IX, Sec. VI, Para. III; the uniformity required by Ga. Const. 1983, Art. IX, Sec. VI, Para. III in the laws creating development authorities is the same uniformity required by Ga. Const. 1983, Art. III, Sec. VI, Para. IV(a) in laws of a general nature. Dev. Auth. v. State, 286 Ga. 36, 684 S.E.2d 856 (2009).

Classification is not unreasonable or arbitrary and is therefore constitutional. — War on Terrorism Local Assistance Act, specifically O.C.G.A. § 36-75-11(c), is not unconstitutional because the classification in § 36-75-11 is not unreasonable and arbitrary since the classification applies in precisely the same way and without exception to every county development authority throughout the state that currently meets or may, in the future, meet the criteria set forth in § 36-75-11(c); the purpose of § 36-75-11 is to protect against the accumulation of excessive bonded indebtedness, and the legislature had a reasonable basis to first address this critical financial situation in counties. Dev. Auth. v. State, 286 Ga. 36, 684 S.E.2d 856 (2009).

Legislation enacting the War on Terrorism Local Assistance Act, Ga. L. 2003, p. 862, does not violate Ga. Const. 1983, Art. III, Sec. VI, Para. IV because the legislation and O.C.G.A. § 36-75-11(c) are logically related and do not embrace discordant subjects when the legislation generally pertains to public safety and judicial facilities authorities, and § 36-75-11(c) applies to authorities in counties that have activated public safety and judicial facilities authorities; it was the legislature's decision to enact a statute imposing a referendum requirement on any authority that has been authorized to incur bonded indebtedness in a county with an activated public safety and judicial facilities authority when that authority has constructed or operates buildings or facilities for use by a department, agency, division, or commission of such county. Dev. Auth. v. State, 286 Ga. 36, 684 S.E.2d 856 (2009).

36-75-12. Authorities with maximum amount of outstanding bonded indebtedness to obtain approval by resolution and referendum prior to issuing additional bonds.

Those public safety and judicial facilities authorities created and activated pursuant to this chapter that have issued the $50 million maximum aggregate amount of bonds permitted under paragraph (13) of Code Section 36-75-7 shall be subject to the provisions of Code Section 36-75-11 when such bonded indebtedness is reduced and such authorities desire to issue additional bonds for new projects. (Code 1981, § 36-75-12, enacted by Ga. L. 2007, p. 421, § 1/HB 181.)

36-75-13. Jurisdictions with activated public safety and judicial facilities authorities prohibited from also activating joint public safety and judicial facilities authority.

On and after May 24, 2007, no county or municipality that has activated or that activates a public safety and judicial facilities authority shall also activate a joint public safety and judicial facilities authority. (Code 1981, § 36-75-13, enacted by Ga. L. 2007, p. 421, § 1/HB 181.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, "May 24, 2007" was substituted for "the effective date of this Code section".

CHAPTER 76

EXPEDITED FRANCHISING OF CABLE AND VIDEO SERVICES

Sec.
36-76-1. Short title.
36-76-2. Definitions.
36-76-3. Franchise options for cable service and video service providers.
36-76-4. Application process for the issuance of a state franchise; fees.
36-76-5. Transfers, modifications, and terminations of a state franchise.
36-76-6. Franchise fees.
36-76-7. Customer service requirements.
36-76-8. Public, educational, and governmental programming under a state franchise.
36-76-9. Service outlet to municipalities and counties; complimentary basic cable service or video service to public schools and public libraries.
36-76-10. Limitations on requirements that may be imposed upon holders of a state franchise.
36-76-11. Discrimination towards potential residential subscribers prohibited.

Administrative rules and regulations. — Cable and video service complaints, Official Compilation of the Rules and Regulations of the State of Georgia, Chapter 93.

Law reviews. — For note on 2007 enactment of this chapter, see 24 Ga. St. U. L. Rev. 223 (2007).

36-76-1. Short title.

This chapter shall be known and may be cited as the "Consumer Choice for Television Act." (Code 1981, § 36-76-1, enacted by Ga. L. 2007, p. 719, § 1/HB 227.)

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

36-76-2. Definitions.

As used in this chapter, the term:

(1) "Advertising and home shopping services revenues" means the amount of a cable service provider or video service provider's non-subscriber revenues from advertising disseminated through cable service or video service and home shopping services. The amount of such revenues that are allocable to a municipality or county shall be equal to the total amount of the cable service provider or video service provider's revenue received from such advertising and home shopping services multiplied by the ratio of the number of such provider's subscribers located in such municipality or in the unincorporated

area of such county to the total number of such provider's subscribers. Such ratio shall be based on the number of such provider's subscribers as of January 1 of the current year, except that in the first year in which services are provided, such ratio shall be computed as of the earliest practical date.

(2) "Affected local governing authority" means any municipal governing authority when any part of such municipality is located within the service area and any county governing authority when any part of the unincorporated area of such county is located within the service area.

(3) "Cable service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service shall not include any video programming provided by a provider of commercial mobile service as defined in 47 U.S.C. Section 332(d) or video programming provided as part of and via a service that enable users to access content, information, e-mail, or other services offered over the public Internet.

(4) "Cable service provider" means any person or group of persons:

(A) Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or

(B) Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(5) "Cable system" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term shall not include:

(A) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(B) A facility that serves subscribers without using any public right of way as defined in this Code section;

(C) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. Sections 201 through 276, except that such facility shall be considered a cable system, other than for purposes of 47 U.S.C. Section 541(c), to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide

interactive on-demand services as that term is defined in 47 U.S.C. Section 522(12);

(D) An open video system that complies with 47 U.S.C. Section 573; or

(E) Any facility of any electric utility used solely for operating such electric utility system.

(6) "Franchise" means an initial authorization or renewal of an authorization issued by a franchise authority, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, ordinance, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable service provider or video service provider's network in the public rights of way.

(7) "Franchise authority" means any governmental entity empowered by federal, state, or local law to grant a franchise. With regard to the holder of a state franchise within the service areas covered by such state franchise, the Secretary of State shall be the sole franchising authority. With respect to a franchise agreement with a municipal or county governing authority, that municipality or county shall be the sole franchising authority within the service areas covered by that local franchise.

(8) "Gross revenues" means all revenues received from subscribers for the provision of cable service or video service, including franchise fees for cable service providers and video service providers, and advertising and home shopping services revenues and shall be determined in accordance with generally accepted accounting principles. Gross revenues shall not include:

(A) Amounts billed and collected as a line item on the subscriber's bill to recover any taxes, surcharges, or governmental fees that are imposed on or with respect to the services provided or measured by the charges, receipts, or payments therefor; provided, however, that for purposes of this Code section, such tax, surcharge, or governmental fee shall not include any ad valorem taxes, net income taxes, or generally applicable business or occupation taxes not measured exclusively as a percentage of the charges, receipts, or payments for services;

(B) Any revenue, such as bad debt, not actually received, even if billed;

(C) Any revenue received by any affiliate or any other person in exchange for supplying goods or services used by the provider to provide cable service or video programming;

(D) Any amounts attributable to refunds, rebates, or discounts;

(E) Any revenue from services provided over the network that are associated with or classified as noncable or nonvideo services under federal law, including, without limitation, revenues received from telecommunications services, information services other than cable service or video service, Internet access services, or directory or Internet advertising revenue, including, without limitation, yellow pages, white pages, banner advertisements, and electronic publishing advertising. Where the sale of any such noncable or nonvideo service is bundled with the sale of one or more cable services or video services and sold for a single nonitemized price, the term "gross revenues" shall include only those revenues that are attributable to cable service or video service based on the provider's books and records; such revenues shall be allocated in a manner consistent with generally accepted accounting principles;

(F) Any revenue from late fees not initially booked as revenues, returned check fees, or interest;

(G) Any revenue from sales or rental of property, except such property as the subscriber shall be required to buy or rent exclusively from the cable service provider or video service provider to receive cable service or video service;

(H) Any revenue received from providing or maintaining inside wiring;

(I) Any revenue from sales for resale with respect to which the purchaser shall be required to pay a franchise fee, provided the purchaser certifies in writing that it shall resell the service and pay a franchise fee with respect thereto; or

(J) Any amounts attributable to a reimbursement of costs including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming.

(9) "Incumbent service provider" means any cable service provider or video service provider providing cable service or video service, respectively, in a municipality or in an unincorporated area of a county on January 1, 2008.

(10) "Original programming" means programming produced specifically for or about a municipality or county or citizens thereof and shall include public government meetings. Original programming shall not include character generated messages, video bulletin board messages, traffic cameras, or other passively produced content.

(11) "PEG" means public, educational, or governmental.

(12) "Public right of way" means the area in, on, along, over, or under the public roads that are part of the municipal or county road system or the state highway system.

(13) "Service area" means the geographic territory within a municipality or unincorporated area of a county where a cable service provider or video service provider provides or has proposed to offer cable service or video service pursuant to a franchise.

(14) "Subscriber" means any person or entity lawfully receiving video service from a video service provider or cable service from a cable service provider.

(15) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

(16) "Video service" means the provision of video programming through wireline facilities located at least in part in the public rights of way without regard to delivery technology, including Internet protocol technology. This term shall not include any video programming provided by a provider of commercial mobile service as defined in 47 U.S.C. Section 332(d) or video programming provided as part of and via a service that enables users to access content, information, e-mail, or other services offered over the public Internet.

(17) "Video service provider" means an entity providing video service as defined in this Code section. This term shall not include a cable service provider. (Code 1981, § 36-76-2, enacted by Ga. L. 2007, p. 719, § 1/HB 227.)

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

36-76-3. Franchise options for cable service and video service providers.

(a)(1) Any entity or person seeking to provide cable service or video service in this state after January 1, 2008, at the discretion of the cable service provider or video service provider, may elect from among the franchise options as set forth in this Code section. A cable service provider or video service provider shall not provide cable service or video service without a franchise obtained pursuant to this chapter.

(2) A cable service provider or video service provider may elect to negotiate a local cable service or video service franchise agreement with a municipal or county franchise authority duly authorized under

the laws of Georgia and may enter into a negotiated cable television franchise agreement in accordance with Title VI of the Communications Act of 1934, as amended, 47 U.S.C. Section 521 et seq., or a video service franchise agreement in accordance with applicable state and federal law that establishes the terms and conditions for the franchise agreement within the jurisdictional limits of that municipality or county. A local cable service or video service franchise agreement entered into after January 1, 2008, shall remain in force and effect through its expiration date notwithstanding subsection (g) of Code Section 36-76-4.

(3) A cable service provider or video service provider may elect to adopt the terms of a negotiated franchise agreement entered into between a cable service provider or video service provider and a municipal or county franchise authority in the service area in which the cable service provider or video service provider desires to provide service. The municipal or county franchise authority shall be required to enter into any such negotiated franchise agreement upon the same terms and conditions to any requesting cable service provider or video service provider. A local cable service or video service franchise agreement that is adopted by a cable service provider or video service provider after January 1, 2008, shall remain in force and effect through its expiration date notwithstanding subsection (g) of Code Section 36-76-4.

(4) A cable service provider or video service provider may elect after January 1, 2008, to file an application for a state franchise in one or more specified service areas with the Secretary of State in accordance with the procedures set forth in this chapter.

(b) The alternatives in subsection (a) of this Code section shall not be mutually exclusive. A cable service provider or video service provider may elect after January 1, 2008, to negotiate with a municipal or county franchise authority to enter into a franchise agreement within a specified service area and may also obtain a state franchise for a different service area. A cable service provider or video service provider shall not operate under a franchise agreement with a municipal or county governing authority and a state franchise from the Secretary of State for the same service area. (Code 1981, § 36-76-3, enacted by Ga. L. 2007, p. 719, § 1/HB 227.)

36-76-4. Application process for the issuance of a state franchise; fees.

(a) To receive a state franchise, a cable service provider or video service provider shall file an application for a state franchise with the Secretary of State, with a copy of such application provided simultane-

ously to each affected municipal or county governing authority at least 45 days prior to offering cable service or video service to subscribers within a specified service area.

(b) The Secretary of State may impose a fee not to exceed $500.00 for a state franchise application and a fee not to exceed $250.00 for an amendment to a state franchise.

(c) The application for a state franchise shall consist of an affidavit signed by an officer or general partner of the applicant that contains each of the following:

(1) An affirmative declaration that the applicant shall comply with all applicable federal and state laws and regulations, including municipal and county ordinances and regulations regarding the placement and maintenance of facilities in the public right of way that are generally applicable to all users of the public right of way and specifically including Chapter 9 of Title 25, the "Georgia Utility Facility Protection Act";

(2) A description of the applicant's service area, which description shall be sufficiently detailed so as to allow a local government to respond to subscriber inquiries, including the name of each municipal or county governing authority within the service area. For the purposes of this paragraph, an applicant may, in lieu of or as supplement to a written description, provide a map on 8 1/2 by 11 inch paper that is clear and legible and that fairly depicts the service area by making reference to the municipal or county governing authority to be served. If the geographical area is less than an entire municipality or county, the map shall describe the boundaries of the geographic area to be served in clear and concise terms;

(3) The location of the applicant's principal place of business, the name or names of the principal executive officer or officers of the applicant, information concerning payment locations or addresses, and general information concerning equipment returns;

(4) Certification that the applicant is authorized to conduct business in the State of Georgia and that the applicant possesses satisfactory financial and technical capability to provide cable service or video service and a description of such capabilities. Such certification shall not be required from an incumbent service provider or any cable service provider or video service provider that has wireline facilities located in the public right of way as of January 1, 2008; and

(5) Notice to the affected local governing authority of its right to designate a franchise fee pursuant to Code Section 36-76-6.

(d) If an application is incomplete, the Secretary of State shall notify the applicant within ten days of the receipt of such application and shall

provide the applicant with a reasonable period of time in which to provide a complete application. If no such notification is made within ten days of the receipt of the application, the application shall be deemed complete. Within 45 days of the receipt of a completed application, the Secretary of State shall, except as set forth in subsection (f) of this Code section, issue a state franchise that contains the following:

(1) A nonexclusive grant of authority to provide cable service or video service as requested in the application;

(2) A nonexclusive grant of authority to construct, maintain, and operate facilities along, across, or on the public right of way in the delivery of cable service or video service, subject to applicable federal and state laws and regulations, including municipal and county ordinances and regulations, regarding the placement and maintenance of facilities in the public right of way that are generally applicable to all users of the public right of way and specifically including Chapter 9 of Title 25, the "Georgia Utility Facility Protection Act"; and

(3) The expiration date of the state franchise, which shall be ten years from the date of issuance, subject to renewal.

(e) The failure of the Secretary of State to issue a state franchise within 45 days of the receipt of a completed application from an incumbent service provider or a cable service provider or video service provider that has wireline facilities located in any public right of way as of January 1, 2008, shall constitute issuance of the requested state franchise to the applicant without further action required by the applicant. The failure of the Secretary of State to issue a state franchise within 45 days of the receipt of a completed application from a cable service provider or video service provider that does not have an existing franchise with a municipal or county governing authority or that does not have wireline facilities located in any public right of way as of January 1, 2008, shall constitute temporary issuance of the requested state franchise to the applicant subject to the provisions of subsection (f) of this Code section.

(f) A municipal or county governing authority that reasonably believes an applicant that has not yet accessed rights of way in that municipality or unincorporated area of a county and does not possess satisfactory financial and technical capability to provide cable service or video service or is not duly authorized to conduct business in Georgia shall object to the issuance of a state franchise before it is officially issued by the Secretary of State. If a municipal or county governing authority objects to the issuance of a state franchise on these grounds, the Secretary of State shall consider whether the objection is well founded and shall make a determination as to whether to grant the

state franchise notwithstanding the objection or to deny or suspend the application pending the receipt of information sufficient to demonstrate the applicant has satisfactory financial and technical capability. If the Secretary of State has not acted on the objection of a municipal or county governing authority's objection and a state franchise is issued as set forth in subsection (e) of this Code section, then such temporary issuance of the state franchise shall be subject to the Secretary of State's determination on the objection.

(g)(1) At any time after January 1, 2008, an incumbent service provider may file an application for a state franchise pursuant to this Code section with the Secretary of State with a copy provided to each affected municipal or county governing authority except as set forth in paragraphs (2) and (3) of subsection (a) of Code Section 36-76-3. Upon the Secretary of State issuing such state franchise, any existing franchise for the service area covered by the state franchise shall, subject to the continuation of PEG support obligations in paragraph (4) of this subsection, terminate and be of no further force or effect.

(2) An incumbent service provider that elects to terminate an existing franchise for the service area covered by the state franchise under this subsection shall remain subject to the contractual rights, duties, and obligations incurred by the incumbent service provider under the terms and conditions of the terminated local franchise that are owed to any private person, including a subscriber.

(3) As used in this subsection, the term "private person" shall not include:

(A) The municipal or county governing authority that issued the terminated local franchise;

(B) A political subdivision, government agency, or authority of the state not described in subparagraph (A) of this paragraph; or

(C) Any official, agent, or employee acting in an official capacity of the municipal or county governing authority that issued the terminated local franchise.

(4) An incumbent service provider that elects to terminate a franchise under this subsection shall continue to provide PEG access support, as such existed on January 1, 2007, under the same terms as the terminated local franchise had it not been terminated until the local franchise would have expired under its own terms.

(5) Notwithstanding a termination of a local franchise pursuant to this subsection, a municipality or county shall be entitled to operate its existing PEG channel or channels, as such existed on January 1, 2007, relating to the number of channels and the usage criteria for such channels under the same terms as the terminated local fran-

chise had it not been terminated, pursuant to this subsection, until July 1, 2012. The 12 month development period for PEG channels set forth in subsection (a) of Code Section 36-76-8 shall not apply to existing PEG channels operating under the entitlement provisions of this subsection.

(6) The 12 month development period for PEG channels set forth in subsection (a) of Code Section 36-76-8 shall not apply to channels being operated at the time that any holder of a state franchise adopts or renews a state franchise after July 1, 2012.

(7) An incumbent service provider that elects to terminate a franchise under this subsection, shall, until July 1, 2012, continue to provide access on the nonbasic or digital tier to any municipality or county that has an activated public safety training channel as of January 1, 2007. This channel shall be used exclusively for the purpose of training public safety personnel. After July 1, 2012, the state franchise holder shall be entitled to use other reasonable, readily accessible means to accomplish the purpose of the channel.

(8) Each holder of a state franchise shall have the obligation to provide access to the same number of PEG channels pursuant to Code Section 36-76-8 and the additional PEG support cash payments specified in this paragraph for PEG access facilities in a service area as the incumbent service provider with the most subscribers in such service area as of January 1, 2007, which obligation shall continue until the local franchise would have expired under its own terms as specified in paragraph (4) of this subsection; provided, however, that if a local franchise would have expired before July 1, 2012, the holder of a state franchise shall continue to provide access to the same number of PEG channels until July 1, 2012, as provided in paragraph (5) of this subsection. To the extent such incumbent service provider provides PEG access support during said period in the form of periodic payments to the municipal or county governing authority equal to a percentage of gross revenue or a prescribed per subscriber amount, the state franchise holder shall be obligated to make the same periodic payments to the governing authority at the same time and equal to the same percentage of gross revenue or prescribed per subscriber amount. To the extent such incumbent service provider provides PEG access support to the applicable governing authority during said period in the form of a lump sum payment that remains unsatisfied as of January 1, 2008, the holder of a state franchise shall be obligated to provide a lump sum payment to said authority based on its proportion of the total number of cable service and video service subscribers of all service providers in such service area. No payments shall be due under this paragraph until the municipality or county notifies the respective providers, in writing, of the percentage of gross

revenues, the per subscriber amount, or the lump sum payment amount and the expiration date of the local franchise obtaining such obligations. The holder of a state franchise may designate that portion of the subscriber's bill attributable to any fee imposed pursuant to this paragraph as a separate item on the bill and recover such amount from the subscriber. (Code 1981, § 36-76-4, enacted by Ga. L. 2007, p. 719, § 1/HB 227; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, deleted "and" at the end of paragraph (c)(3).

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

36-76-5. Transfers, modifications, and terminations of a state franchise.

(a) A state franchise shall be fully transferable to any successor in interest to the applicant. A notice of transfer shall be filed by the transferee with the Secretary of State with a copy provided to each affected municipal or county governing authority within 45 days of such transfer. The transfer notification shall consist of an affidavit signed by an officer or general partner of the transferee that contains each of the following:

(1) An affirmative declaration that the applicant shall comply with all applicable federal and state laws and regulations, including municipal and county ordinances and regulations, regarding the placement and maintenance of facilities in any public right of way that are generally applicable to all users of the public right of way and specifically including Chapter 9 of Title 25, the "Georgia Utility Facility Protection Act";

(2) A description of the transferee's service area, including the name of each municipal or county governing authority within the service area;

(3) The location of the transferee's principal place of business and the name or names of the principal executive officer or officers of the transferee; and

(4) A description of material changes, if any, of the information set forth in the applicant's initial application for a state franchise.

(b) Any outstanding liabilities that have become due and are still owed to a municipal or county governing authority under a state franchise issued pursuant to this chapter shall be fully transferable under this Code section to any successor in interest to the applicant.

(c) The failure of the Secretary of State to issue an amended state franchise within 45 days of the receipt of a completed transfer notice shall constitute issuance of the requested amended state franchise to the transferee without further action required.

(d) A cable service provider or video service provider may modify its service area covered by the state franchise by notifying the Secretary of State of changes to the service area, with a copy provided to each affected municipal or county governing authority, at least 20 days prior to the effective date of such change. Such notification shall contain a geographic description of the new service area or areas and a list of each municipal or county governing authority within the service area.

(e) A state franchise issued pursuant to this chapter may be terminated by the cable service provider or video service provider by submitting a notice of termination to the Secretary of State with a copy provided to each affected municipal or county governing authority. Such notice shall identify the cable service provider or video service provider, the affected service area, and the effective date of such termination, which shall not be more than 60 days from the date of filing the notice of termination. (Code 1981, § 36-76-5, enacted by Ga. L. 2007, p. 719, § 1/HB 227.)

36-76-6. Franchise fees.

(a)(1) The holder of a state franchise, whether a cable service provider or a video service provider, shall pay to each affected local governing authority which complies with this Code section a franchise fee which shall not exceed the maximum percentage rate permitted in 47 U.S.C. Section 542(b) of such holder's gross revenues received from the provision of cable service or video service to subscribers located within such holder's service area.

(2) Each affected local governing authority or its authorized designee shall provide written notice to the Secretary of State and each applicant for or holder of a state franchise with a service area located within that affected local governing authority's jurisdiction of the franchise fee rate that applies to the applicant for or holder of such state franchise. The applicant for or holder of a state franchise shall start assessing the franchise fee within 15 days of receipt of written notice from the affected local governing authority or its authorized designee and shall not be required to pay such franchise fee until the expiration of 15 days after receipt of such written notice. Any incumbent service provider who obtains a state franchise under paragraph (1) of subsection (g) of Code Section 36-76-4 shall pay its existing franchise fee during the 15 day period after receipt of written notice of the new fee. The franchise fee rate shall be uniformly

applicable to all cable service providers and video service providers that obtain a state franchise within the affected local governing authority. For purposes of this Code section, an authorized designee is an agent authorized by charter or other act of the affected local governing authority.

(3) Any affected local governing authority may change the franchise fee applicable to holders of a state franchise once every two years. The affected local governing authority or its authorized designee shall provide written notice to the Secretary of State and the applicants for or holders of a state franchise with a service area within that affected local governing authority's jurisdiction of the new franchise fee rate. The holder of a state franchise shall start assessing the new franchise fee within 45 days of receipt of written notice of the change from the affected local governing authority or its authorized designee. The franchise fee rate shall be uniformly applicable to all cable service providers and video service providers that obtain a state franchise within the affected local governing authority's jurisdiction.

(b) Such franchise fee shall be paid directly to each affected local governing authority within 30 days after the last day of each calendar quarter. Such payment shall be considered complete if accompanied by a statement showing, for the quarter covered by the payment:

(1) The aggregate amount of the state franchise holder's gross revenues, specifically identifying subscriber and advertising and home shopping services revenues under this chapter insofar as the franchise holder's existing billing systems include such capability, attributable to such municipality or unincorporated areas of the county; and

(2) The amount of the franchise fee payment due to such municipality or county.

In the event that franchise fees are not paid on or before the dates specified above, then the affected local governing authority shall provide written notice to the franchise holder giving the cable service provider or video service provider 15 days from the date of the franchise holder's receipt of such notice to cure any such nonpayment. In the event franchise fees are not remitted to the affected local government authority postmarked on or before the expiration of the 15 day cure period, then the holder of the state franchise shall pay interest thereon at a rate of 1 percent per month to the affected local governing authority. If the 15 day cure period expires on Saturday, Sunday, or a legal holiday, the due date shall be the next business day. Moreover, the franchise holder shall not be assessed interest on late payments if franchise payments were submitted in error to a neighboring local governing authority.

(c) Each affected local governing authority may, no more than once annually, audit the business records of the state franchise holder to the extent necessary to ensure payment in accordance with this Code section. For purposes of this subsection, an audit shall be defined as a comprehensive review of the records of the holder of a state franchise. Once any audited period of a state franchise holder has been the subject of a requested audit, such audited period of such state franchise holder shall not again be the subject of any audit. In the event of a dispute concerning the amount of the franchise fee due to an affected local governing authority under this Code section, an action may be brought in a court of competent jurisdiction by an affected local governing authority seeking to recover an additional amount alleged to be due or by a state franchise holder seeking a refund of an alleged overpayment; provided, however, that any such action shall be brought within three years following the end of the quarter to which the disputed amount relates. Such time period may be extended by written agreement between the state issued franchise holder and such affected local governing authority. Each party shall bear the party's own costs incurred in connection with any such examination or dispute. In the event that an affected local governing authority files an action to recover alleged underpayments of franchise fees and a court of competent jurisdiction determines the cable service provider or video service provider has underpaid franchise fees due for any 12 month period by 10 percent or more, the cable service provider or video service provider may be required to pay the affected local governing authority its reasonable costs associated with the audit along with any franchise fee underpayments; provided, however, late payments shall not apply.

(d) The statements made pursuant to subsection (b) of this Code section and any records or information furnished or disclosed by a cable service provider or video service provider to an affected local governing authority pursuant to subsection (c) of this Code section shall be exempt from public inspection under Article 4 of Chapter 18 of Title 50.

(e) No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim an affected local governing authority may have for further or additional sums payable as a franchise fee.

(f) Any amounts overpaid by the holder of a state franchise shall be deducted from future franchise payments.

(g) The holder of a state franchise may designate that portion of a subscriber's bill attributable to any franchise fee imposed pursuant to this Code section as a separate item on the bill and recover such amount from the subscriber; provided, however, that such separate listing shall be referred to as a "franchise" or a "franchise fee."

(h) No affected local governing authority shall levy any additional tax, license, fee, surcharge, or other assessment on a cable service

provider or video service provider for or with respect to the use of any public right of way other than the franchise fee authorized by this Code section. Nor shall an affected local governing authority levy any other tax, license, fee, or assessment on a cable service provider or video service provider or its subscribers that is not generally imposed and applicable to a majority of all other businesses. The franchise fee authorized by this Code section shall be in lieu of any permit fee, encroachment fee, degradation fee, or other fee that could otherwise be assessed on a state issued franchise holder for the holder's occupation or work within the public right of way; provided, however, that nothing in this Code section shall restrict the right of any municipal or county governing authority to impose ad valorem taxes, sales taxes, or other taxes lawfully imposed on a majority of all other businesses within such municipality or county. (Code 1981, § 36-76-6, enacted by Ga. L. 2007, p. 719, § 1/HB 227; Ga. L. 2012, p. 218, § 9/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted "Article 4 of Chapter 18 of Title 50" for "Code Section 50-18-70" in subsection (d).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, subsection (a) was designated as present paragraph (a)(1) and former paragraphs (a)(1) and (a)(2) were redesignated as present paragraphs (a)(2) and (a)(3), respectively.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

36-76-7. Customer service requirements.

(a) The holder of a state franchise shall comply with the customer service standards as set forth in 47 C.F.R. 76.309(c). No franchising authority shall have the power to require the holder of a state franchise to comply with any customer service standards other than those set forth in this Code section.

(b) Except as provided in paragraph (2) of subsection (c) of this Code section, each affected local governing authority shall receive and handle complaints from subscribers of the holder of a state franchise that reside in the affected local governing authority's jurisdiction.

(c)(1) By December 31, 2007, the Governor's Office of Consumer Affairs shall establish a uniform set of rules, which may include fines and penalties, pursuant to which an affected local governing authority shall resolve subscriber complaints. Said rules shall include a requirement that the cable service provider or video service provider participate in mandatory nonbinding mediation with the affected local governing authority and the subscriber if the issue cannot be resolved between the cable service provider or video service provider and the subscriber. Said rules shall apply only until 50 percent of the

potential subscribers within an affected local governing authority are offered service by two or more cable service providers or video service providers holding a state franchise or a local franchise.

(2) After such time as 50 percent of the potential subscribers within an affected local governing authority are being offered service by two or more cable service providers or video service providers holding a state franchise or a local franchise, an affected local governing authority may, in its discretion, by the adoption of a resolution or ordinance, discontinue receiving and handling all subscriber inquiries, billing issues, and other complaints for state franchise holders. Notwithstanding any other provision of law, where an affected local governing authority discontinues receiving and handling subscriber inquiries, billing issues, and other complaints relating to state franchise holders by adoption of a resolution or ordinance pursuant to this paragraph, bills to subscribers by cable service providers or video service providers holding a state franchise shall not include the contact information of such affected local governing authority for the purpose of directing or initiating complaints or making other such subscriber inquiries. (Code 1981, § 36-76-7, enacted by Ga. L. 2007, p. 719, § 1/HB 227; Ga. L. 2008, p. 324, § 36/SB 455.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, "inquiries" was substituted for "inquires" throughout paragraph (c)(2).

36-76-8. Public, educational, and governmental programming under a state franchise.

(a) No later than 12 months after receipt of a written request by a municipal or county governing authority, the holder of a state franchise shall designate capacity in its network to allow for the airing of noncommercial PEG programming required by this Code section.

(b)(1) Subject to the usage criteria set forth in this subsection, a municipal or county governing authority that does not have PEG access channels activated under the incumbent service provider's franchise agreement as of January 1, 2008, may request a sufficient amount of capacity on its network to support up to three PEG channels for a municipality in this state having a population of 50,000 or more according to the United States decennial census of 2000 or any future such census or an unincorporated area of a county which is located in a county in this state having a population of 50,000 or more according to the United States decennial census of 2000 or any future such census or up to two PEG channels for a municipality in this state having a population of 50,000 or less according to the United States decennial census of 2000 or any future such census or an unincorporated area of a county which is located in

a county in this state having a population of 50,000 or less according to the United States decennial census of 2000, and the cable service provider or video service provider shall designate such sufficient amount of capacity. No cable service provider or video service provider shall be required to provide more than three PEG access channels on its network within a municipality or unincorporated area of a county if there does not exist at the time of the state franchise more than three active PEG channels in such municipality or unincorporated area of the county.

(2) To qualify for the first PEG channel on the basic or analog tier of service, the written request of the municipality or county shall include a certification that it has produced at least 15 hours of nonduplicative original programming for production in the first month of operation and that the municipality or county shall continue to produce at least 15 hours of nonduplicative original programming for each month that the channel is provided.

(3) Alternatively, to qualify for the first PEG channel on the basic or analog tier of service, two or more municipalities or counties may collectively include a certification that they have produced at least 15 hours of nonduplicative original programming for production in the first month of operation and that the municipalities or counties shall continue to produce at least 15 hours of nonduplicative original programming for each month that the channel is provided.

(4) To qualify for a second PEG channel on the basic or analog tier of service, the municipality or county shall certify that the first channel is being substantially utilized, and that upon activation, the second PEG channel shall also be substantially utilized. For purposes of this subsection, PEG channels shall be considered "substantially utilized" when 12 continuous hours of content are programmed on that channel each calendar day. In addition, at least 75 percent of the 12 hours of programming for each business day over each calendar quarter, on average, shall be nonduplicative programming. Nonduplicative programming shall include the first three broadcasts in a day of a meeting of an elected government body.

(5) To qualify for a third PEG channel, a municipality in this state having a population of 50,000 or more according to the United States decennial census of 2000 or any future such census or an unincorporated area of a county which is located in a county in this state having a population of 50,000 or more according to the United States decennial census of 2000 or any future such census shall certify that the channel shall be programmed for at least eight continuous hours of nonduplicative content per day. The third PEG channel shall only be available on the nonbasic digital tier.

(6) Any municipality or county that has not obtained a second PEG channel on the basic or analog tier may qualify for a second PEG

channel on the nonbasic digital tier by certifying that the channel shall be programmed for at least eight continuous hours of nonduplicative content per day.

(7) Any PEG channel capability provided pursuant to this Code section that does not comply with the usage criteria set forth in this subsection or is not substantially utilized by the municipality or county shall no longer be made available after reasonable notice is provided to the municipality or county but may be programmed at the franchise holder's discretion. At such time as the municipality or county certifies to the franchise holder that it shall meet the usage criteria for that particular channel, the cable service provider or video service provider shall restore the previously lost channel. However, the franchise holder shall be under no obligation to carry that channel on a basic or analog tier.

(c) Upon request by a municipality or county that does not have an activated PEG channel, the state franchise holder shall provide access to one nonexclusive PEG channel for the purpose of providing public, educational, and government programming. This nonexclusive channel shall be available as an additional option to municipalities and counties and shall not eliminate the requirements of subsection (b) of this Code section.

(d) In the event that the provision of video service and cable service is federally mandated to be digitally provided, the franchise holder shall be entitled to satisfy the PEG obligations by locating the channels on any channel provided in the basic subscription service offered by the provider.

(e) Municipalities, counties, and cable service providers and video service providers shall cooperate in the sharing of channel capacity to provide PEG access for municipalities and counties served by the cable service provider or video service provider.

(f) The holder of a state franchise shall designate capacity on its system sufficient to allow the provision of the same number of PEG access channels that a municipal or county governing authority has activated under the incumbent service provider's franchise agreement as of January 1, 2008.

(g) The operation of any PEG access channel provided pursuant to this Code section and the production of programming thereon, including all capital costs and costs of production, shall be the responsibility of the municipality or the county receiving the benefit of such channel, and the holder of a state franchise shall only have the responsibility to transmit such channel to subscribers. If the holder elects not to seek interconnection with the incumbent under subsection (i) of this Code section or if the incumbent service provider and the holder of a state

franchise cannot reach mutual agreement on interconnection terms, the holder of a state franchise shall be responsible for providing one location of connectivity to each PEG access channel up to the first 200 feet from the holder's activated wireline video programming distribution facility located in the holder's designated service area.

(h) The municipality or the county shall ensure that all transmissions of content and programming provided by or arranged by them to be transmitted over a PEG channel by a holder of a state franchise are provided and submitted to the cable service provider or video service provider in a manner or form that is capable of being accepted and transmitted by such cable service provider or video service provider over its system without further alteration or change in the content or transmission signal and which is compatible with the technology or protocol utilized by the cable service provider or video service provider to deliver its cable services or video services. The provision of PEG content to the cable service provider or video service provider shall constitute authorization for such cable service provider or video service provider to carry such content on the PEG channel of the municipality or county including, at the cable service provider or video service provider's option, providing such content beyond the jurisdictional boundaries of the municipality or county to the extent permitted by federal law.

(i) Where technically feasible, the holder of a state franchise and an incumbent service provider shall use reasonable efforts to interconnect their systems on mutually acceptable and reasonable terms for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection. Holders of a state franchise and incumbent service providers shall not unreasonably withhold interconnection of PEG channels.

(j) A holder of a state franchise shall not be required to interconnect for or otherwise transmit commercial PEG programming content or PEG content that is branded with the logo, name, or other identifying marks of another cable service provider or video service provider, and a municipality or county may require a cable service provider or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be made available to another provider. (Code 1981, § 36-76-8, enacted by Ga. L. 2007, p. 719, § 1/HB 227.)

36-76-9. Service outlet to municipalities and counties; complimentary basic cable service or video service to public schools and public libraries.

A cable service provider or video service provider shall, upon written request by a municipality or county, install, at no charge, one service

outlet to a demarcation point located on the outside of any designated municipal or county building or multibuilding complex, provided such building demarcation point is within 125 feet from the cable service provider or video service provider's activated distribution point of connection. A cable service provider or video service provider shall not be required to extend its facilities beyond the appropriate demarcation point located outside the building or to perform any inside wiring. The cable service provider or video service provider shall provide complimentary basic cable service or video service to public schools and public libraries over that one service outlet free of charge, which service shall not be used for commercial purposes. The cable service provider or video service provider shall provide complimentary basic cable service or video service to public buildings other than public schools and public libraries only to the extent such a complimentary service arrangement existed under the terms of a local franchise agreement in effect as of January 1, 2007, and shall continue only until the local franchise agreement would have expired under its own terms; provided, however, that such provider shall not be precluded from providing such additional complimentary service at its option. The municipality or county may not receive service at the same building from more than one cable service provider or video service provider at a time under this Code section. (Code 1981, § 36-76-9, enacted by Ga. L. 2007, p. 719, § 1/HB 227.)

36-76-10. Limitations on requirements that may be imposed upon holders of a state franchise.

No franchising authority, state agency, or political subdivision of the state shall impose any build-out requirement on system construction or service deployment on a holder of a state franchise. This chapter shall occupy the entire field of franchising or otherwise regulating cable service and video service. An affected local governing authority's power to regulate the holder of a state franchise shall be limited to:

(1) A requirement that the holder of a state franchise who is providing cable service or video service within the municipality or unincorporated area of the county shall notify each affected local governing authority at least ten days before providing service in such municipality or county. A municipal or county governing authority may require the holder of a state franchise to update the description of the service area provided in the application for a state franchise annually and may also require the holder of a state franchise to maintain a point of contact that shall be available during normal business hours;

(2) The establishment of reasonable guidelines regarding the use of PEG access channels;

(3) The lawful and reasonable exercise of the police powers of the municipal or county governing authority to the extent reasonably necessary to protect the health, safety, and welfare of the public;

(4) The enactment and enforcement of lawful and reasonable laws and rules and municipal or county ordinances and regulations concerning excavation, permitting, bonding requirements, indemnification requirements, and placement and maintenance of facilities in any public right of way that are generally applicable to all users of any public right of way, except to the extent specifically precluded by subsection (h) of Code Section 36-76-6; and

(5) The lawful and reasonable exercise of the rights established in this chapter. (Code 1981, § 36-76-10, enacted by Ga. L. 2007, p. 719, § 1/HB 227.)

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

36-76-11. Discrimination towards potential residential subscribers prohibited.

(a) A holder of a state franchise shall not deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

(b) For purposes of determining whether a cable service provider or video service provider has violated subsection (a) of this Code section, cost, density, distance, and technological or commercial limitations shall be taken into account. An alleged violation of subsection (a) of this Code section shall only be considered within the description of the service area set forth in an application or amended application for a state franchise. The inability to serve an end user because a holder is prohibited from placing its own facilities in a building or property shall not be found to be a violation of subsection (a) of this Code section. Use of an alternative technology or service arrangement that provides comparable content, service, and functionality shall not be considered a violation of subsection (a) of this Code section. This Code section shall not be construed as authorizing any build-out requirements on a cable service provider or video service provider.

(c) Any potential residential subscriber or group of residential subscribers who believes it is being denied access to services in violation of subsection (a) of this Code section may file a complaint with the affected local governing authority, along with a clear statement of the facts and the information upon which it is relying to support the complaint. Upon

receipt of any such complaint, the affected local governing authority shall serve a copy of the complaint and supporting materials upon the subject cable service provider or video service provider, which shall have 60 days after receipt of such information to submit a written answer and any other relevant information the provider wishes to submit to the affected local governing authority in response to the complaint. If the affected local governing authority is not satisfied with the response, the affected local governing authority shall compel the cable service provider or video service provider to participate in nonbinding mediation. If the mediation does not resolve the matter to the satisfaction of the affected local governing authority, the affected local governing authority may file a complaint with a court of competent jurisdiction. No affected local governing authority shall file an action in court without having participated in a mediation of the complaint. If such court finds that the holder of a state franchise is in material noncompliance with this Code section, the holder shall have a reasonable period of time, as specified by the court, to cure such noncompliance. The court may also award the affected local governing authority its reasonable costs and attorneys fees in seeking enforcement of subsection (a) of this Code section. (Code 1981, § 36-76-11, enacted by Ga. L. 2007, p. 719, § 1/HB 227.)

CHAPTERS 77 THROUGH 79

Reserved

Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities

CHAPTER 80

GENERAL PROVISIONS

Sec.

36-80-1. All meetings of governing bodies to be public; private executive sessions; penalty [Repealed].

36-80-2. Power to issue notes, certificates, and other evidence of indebtedness in anticipation of taxes.

36-80-3. Authorized investments of funds by governing bodies.

36-80-4. Delegation of governing body's investment authority to financial officer.

36-80-5. Relief from or composition of debts under federal statute prohibited.

36-80-6. State furnished services, assistance, funds, property, and other incentives for consolidated programs.

36-80-7. Execution of contracts, plans, and documents for consolidated programs.

36-80-8. Establishment of area offices for consolidated programs.

36-80-9. Promulgation of rules and regulations for consolidated programs; requirement of submission of plans and reports.

36-80-10. Election for unbonded debt — Requirement and procedure.

36-80-11. Notice of election for unbonded debt.

36-80-12. Voting in election for unbonded debt; returns and declaration of election result.

36-80-13. Authorization to incur unbonded debt following favorable vote.

36-80-14. Annual sinking fund for unbonded debt.

36-80-15. Allocation and expenditure of proceeds from timber sales from military installations and facilities.

36-80-16. Local Government Authorities Registration.

36-80-16.1. PILOT restriction; payments in lieu of taxes defined; financing capital projects.

36-80-17. Authorization to contract for utility services; conditions and limitations.

36-80-18. Environmental assessment required prior to acquiring real property for recreational area; continuing assessment.

36-80-19. General codification of ordinances and resolutions; publication and availability of code; official state repository for general codifications.

36-80-20. Decal or seal required on vehicles owned or leased by any county, municipality, regional commission, school system, commission, board, or public authority.

36-80-21. Definitions; electronic transmission of budgets.

36-80-22. Definitions; restrictions; requirements.

36-80-23. Prohibition on immigration sanctuary policies by local governmental entities; certification of compliance.

Cross references. — Powers and duties of counties, municipal corporations, and other entities, pertaining to lending of aid to construction, and operation of housing projects, § 8-3-150 et seq. Acquisition of property by counties, municipalities, and other entities for transportation purposes generally, T. 32, C. 3. Deferred compensation plans for county, municipal, and other employees, § 45-18-30 et seq. Liability of officers, agents, and others of counties, municipalities, and other entities for acts performed while fighting fires or performing duties at scene of emergencies, § 51-1-30.

Law reviews. — For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

36-80-1. All meetings of governing bodies to be public; private executive sessions; penalty.

Reserved. Repealed by Ga. L. 1988, p. 235, § 2, effective July 1, 1988.

Editor's notes. — This Code section was based on Ga. L. 1965, p. 118, § 2; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1987, p. 3, § 36.

36-80-2. Power to issue notes, certificates, and other evidence of indebtedness in anticipation of taxes.

Counties, municipalities, county boards of education, and other political subdivisions of the state which are authorized to levy taxes shall have the power and authority, within the limitations prescribed by Article IX, Section V, Paragraph V of the Constitution of Georgia, to issue notes, certificates, or other evidence of indebtedness in anticipation of the collection of taxes levied or to be levied during the calendar year. (Ga. L. 1963, p. 450, § 1; Ga. L. 1983, p. 3, § 57.)

JUDICIAL DECISIONS

Cited in Colonial Oil Co. v. United States Guarantee Co., 56 F. Supp. 545 (S.D. Ga. 1944); Robinson Explosives, Inc. v. Dalon Contracting Co., 132 Ga. App. 849, 209 S.E.2d 264 (1974); Dougherty County v. White, 439 U.S. 32, 99 S. Ct. 368, 58 L. Ed. 2d 269 (1978); City of Bremen v. Regions Bank, 274 Ga. 733, 559 S.E.2d 440 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Borrowing for construction projects. — When allotted funds from the State Board of Education for school construction result in construction projects of less than $200,000.00, the Georgia Education Authority (Schools) does not directly supervise construction but requires the local school system to construct the project itself and then be reimbursed by the authority. This procedure often makes it necessary for the local school system to borrow a substantial part of the construction costs for a period of nine months to a year, and such borrowing is within the legal power of local school systems. 1968 Op. Att'y Gen. No. 68-18.

RESEARCH REFERENCES

ALR. — Power of legislature to add to or make more onerous the conditions or limitations prescribed by Constitution upon incurring public debts, 106 ALR 231.

36-80-3. Authorized investments of funds by governing bodies.

(a) The governing body of a municipality, county, school district, or other local governmental unit or political subdivision, in addition to all other legal investments, may invest and reinvest money subject to its control and jurisdiction in:

(1) Obligations of the United States and of its agencies and instrumentalities;

(2) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities; and

(3) Certificates of deposit of banks which have deposits insured by the Federal Deposit Insurance Corporation; provided, however, that that portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured by direct obligations of this state or the United States which are of a par value equal to that portion of such certificates of deposit which would be uninsured.

(b) This Code section shall not impair the power of a municipality, county, school district, or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law. (Ga. L. 1964, p. 741, § 1; Ga. L. 1973, p. 1192, § 1.)

Law reviews. — For article discussing tax-exempt financing in Georgia, see 18 Ga. St. B.J. 20 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Phrase "certificates of deposit" as used in former Code 1933, § 32-942 (see O.C.G.A. § 20-2-411) applied to certificates of deposit issued by commercial banks and to certificates of deposit issued by federal or state chartered savings and loan associations. The investment of school funds in "certificates of deposit" issued by institutions other than those named would present a question of whether such investment would be prudent and in the exercise of sufficient care and diligence. 1969 Op. Att'y Gen. No. 69-306.

Investment of bond proceeds in certificates of deposit is not allowed under this section. 1974 Op. Att'y Gen. No. U74-71 (see O.C.G.A. § 36-80-3).

Responsibility of school officials. — Local school officials, in making legally authorized investments of local school funds, are not responsible if that investment results in a loss rather than a gain so long as the investment, at the time the investment was made, was reasonably prudent and cautious under the circumstances, and especially if the loss is occasioned by economic conditions over which the officials have no control. 1969 Op. Att'y Gen. No. 69-306.

RESEARCH REFERENCES

C.J.S. — 26B C.J.S., Depositaries, § 43 et seq. 64A C.J.S., Municipal Corporations, § 2089 et seq.

ALR. — Extent of power of school district to provide for the comfort and convenience of teachers and pupils, 7 ALR 791; 52 ALR 249.

Municipal funds and credits as subject to levy under execution or garnishment on judgment against municipality, 89 ALR 863.

Particular purposes within contemplation of statute authorizing issuance of bonds or use of funds by school district for specified purposes, 124 ALR 883.

Requirement of prior appropriation by municipal authorities as condition of making a contract or incurring expense as applicable to local improvements, or bond issue payable only out of special funds and not constituting an obligation of the municipality, 124 ALR 1467.

Rights and liabilities of municipality as to interest earned on improvement assessments or other special funds collected or held by it, 143 ALR 1341.

36-80-4. Delegation of governing body's investment authority to financial officer.

The governing body may delegate the investment authority provided by Code Section 36-80-3 to the treasurer or other financial officer charged with custody of the funds of the local government, who shall thereafter assume full responsibility for such investment transactions until the delegation of authority terminates or is revoked. (Ga. L. 1964, p. 741, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Phrase "certificates of deposit" as used in former Code 1933, § 32-942 (see O.C.G.A. § 20-2-411) applied to certificates of deposit issued by commercial banks and to certificates of deposit issued by federal or state chartered savings and loan associations. The investment of school funds in "certificates of deposit" issued by institutions other than those named would present a question of whether such investment would be prudent and in the exercise of sufficient care and diligence. 1969 Op. Att'y Gen. No. 69-306.

Responsibility of school officials. — Local school officials, in making legally authorized investments of local school funds, are not responsible if that investment results in a loss rather than a gain so long as the investment, at the time the investment was made, was reasonably prudent and cautious under the circumstances, and especially if the loss is occasioned by economic conditions over which the officials have no control. 1969 Op. Att'y Gen. No. 69-306.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 195.

ALR. — Extent of power of school district to provide for the comfort and convenience of teachers and pupils, 7 ALR 791; 52 ALR 249.

Municipal funds and credits as subject to levy under execution or garnishment on judgment against municipality, 89 ALR 863.

Requirement of prior appropriation by municipal authorities as condition of making a contract or incurring expense as applicable to local improvements, or bond issue payable only out of special funds and

not constituting an obligation of the municipality, 124 ALR 1467.

Rights and liabilities of municipality as to interest earned on improvement assessments or other special funds collected or held by it, 143 ALR 1341.

36-80-5. Relief from or composition of debts under federal statute prohibited.

(a) No county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state shall be authorized to file a petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities.

(b) No chief executive, mayor, board of commissioners, city council, board of trustees, or other governmental officer, governing body, or organization shall be empowered to cause or authorize the filing by or on behalf of any county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state of any petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities. (Ga. L. 1976, p. 1557, §§ 1, 2.)

Law reviews. — For comment, "Federalism, States, and the Power to Regulate Municipal Bankruptcies: Who May be a Debtor under Section 109(c)?," see 9 Bank. Dev. J. 621 (1993).

RESEARCH REFERENCES

ALR. — What amounts to "indebtedness" to state within constitutional or statutory provision as to release or compromise of same, 108 ALR 376.

36-80-6. State furnished services, assistance, funds, property, and other incentives for consolidated programs.

The state and all departments, boards, bureaus, commissions, and other agencies thereof are authorized and empowered, within the limitations of the Constitution of Georgia, to furnish and make available services, assistance, funds, property, and other incentives to any two or more counties, municipal corporations, public corporations, and other political subdivisions of this state or any combination thereof, in connection with any program of services, benefits, administration, or other undertaking in which the state or any of its agencies participates, by furnishing supervision, services, property, administration, or funds,

where such counties, municipal corporations, public corporations, or other political subdivisions are thereby able and willing to provide for the consolidation, combining, merger, or joint administration of such program or any part or function thereof by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof. The incentives referred to in this Code section shall also include the assuming by the state or its agencies of a greater share or, where funds are available and such is deemed feasible, the entire cost of such participating program. (Ga. L. 1963, p. 354, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Payment for preparation of study. — State Planning and Programming Bureau (now Department of Community Affairs) can use money from Governor's emergency fund to prepare municipal planning study itself or, in the alternative, contract with a third party, such as a planning consultant, for preparation of the study by the latter. 1969 Op. Att'y Gen. No. 69-312.

36-80-7. Execution of contracts, plans, and documents for consolidated programs.

The state and all of its agencies are authorized to execute such contracts, plans, or other documents as may be necessary or desirable to effectuate the purposes of Code Section 36-80-6, this Code section, and Code Sections 36-80-8 and 36-80-9. (Ga. L. 1963, p. 354, § 2; Ga. L. 1993, p. 91, § 36.)

36-80-8. Establishment of area offices for consolidated programs.

The state and all of its agencies are empowered to establish and maintain area offices for such combined, consolidated, or merged undertakings. (Ga. L. 1963, p. 354, § 3.)

36-80-9. Promulgation of rules and regulations for consolidated programs; requirement of submission of plans and reports.

The state and its agencies are authorized to prescribe such reasonable rules, regulations, and requirements and to require the submission of such plans and reports from the participating units as may be deemed necessary or desirable to the proper administration of Code Sections 36-80-6 through 36-80-8 and this Code section. (Ga. L. 1963, p. 354, § 4; Ga. L. 1993, p. 91, § 36.)

36-80-10. Election for unbonded debt — Requirement and procedure.

When any county, municipality, or political subdivision desires to incur any debt, within the purview and meaning of Article IX, Section V, Paragraph I or II of the Constitution of Georgia other than a bonded debt, the election required shall be called and held in accordance with Code Sections 36-80-11 through 36-80-14. (Ga. L. 1904, p. 85, § 1; Civil Code 1910, § 463; Code 1933, § 87-601; Ga. L. 1983, p. 3, § 57.)

JUDICIAL DECISIONS

Taxpayers may enjoin payment of illegal debt. — Taxpayers of a city have such an interest in the money raised by taxation for municipal purposes as to maintain a suit to restrain the creation or payment of illegal debts by the municipality. Renfroe v. City of Atlanta, 140 Ga. 81, 78 S.E. 449 (1913); Brumby v. Board of Lights & Waterworks, 147 Ga. 592, 95 S.E. 7 (1918).

Power under local Act to buy out competition. — Under the Act of 1906 (Ga. L. 1906, p. 846) giving the board power to erect waterworks and to make all contracts for the light and water supply, such Act did not authorize the board to pay $15,000.00 to a competing company to quit operating its electric light plant in the city, where under the contract the board obtained nothing in the way of plant, poles, etc., and such contract can be enjoined at the instance of a taxpayer. Brumby v. Board of Lights & Waterworks, 147 Ga. 592, 95 S.E. 7 (1918).

OPINIONS OF THE ATTORNEY GENERAL

Majority of voters participating necessary. — In municipal elections to incur debt, approval of a majority of qualified voters participating in the election is required to incur debt rather than approval of a majority of all qualified voters. 1954-56 Op. Att'y Gen. p. 491.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 534, 544.

C.J.S. — 20 C.J.S., Counties, §§ 310, 311. 64A C.J.S., Municipal Corporations, § 2057.

ALR. — Requirement of prior appropriation by municipal authorities as condition of making a contract or incurring expense as applicable to local improvements, or bond issue payable only out of special funds and not constituting an obligation of the municipality, 124 ALR 1467.

Constitutional or statutory requirement of prior approval by electors of issuance of bonds or incurring of indebtedness, by municipality, county, or state, as applicable to bonds or other instruments not creating indebtedness, 146 ALR 604.

36-80-11. Notice of election for unbonded debt.

The officers charged with levying taxes, contracting debts, and the like for the county, municipality, or political subdivision shall give notice, for a period of 30 days next preceding the day of the election, in the newspaper in which sheriff's advertisements for the county are

published, notifying the qualified voters that on the day named an election will be held to determine whether the debt desired or proposed to be incurred shall be incurred by the county, municipality, or political subdivision. The notice shall specify the amount of the debt to be incurred, the purposes for which it is to be incurred, the amount of the debt to be paid annually or at shorter periods, the terms of the contract under which the debt is to be incurred, and the wording of the ballots to be used in the election for or against incurring the debt. (Ga. L. 1904, p. 85, § 1; Civil Code 1910, § 463; Code 1933, § 87-601.)

JUDICIAL DECISIONS

Sufficiency of compliance with requirement to specify terms of contract. — Notice specifying that the rate of interest shall be "not exceeding 6 percent per annum," is not a compliance with the provisions of this section which requires "the terms of the contract under which the debt is to be incurred" to be set forth. City of Thomasville v. Thomasville Elec. Light & Gas Co., 122 Ga. 399, 50 S.E. 169 (1905) (see O.C.G.A. § 36-80-11).

36-80-12. Voting in election for unbonded debt; returns and declaration of election result.

The election shall be held at all the voting or election precincts within the limits of the county, municipality, or political subdivision. It shall be held by the same persons, in the same manner, and under the same rules and regulations as elections for officers of the county, municipality, or political subdivision are held. The returns shall be made to the officers calling or ordering the election, who shall, in the presence of and together with the several managers who bring up the returns, consolidate the returns and declare the result. (Ga. L. 1878-79, p. 40, § 2; Civil Code 1895, § 378; Ga. L. 1904, p. 85, § 2; Civil Code 1910, § 464; Code 1933, § 87-602.)

RESEARCH REFERENCES

C.J.S. — 29 C.J.S., Elections, § 127 et seq.

36-80-13. Authorization to incur unbonded debt following favorable vote.

When the notice is given and the election is held in accordance with Code Section 36-80-12, if the requisite majority of the qualified voters of the county, municipality, or political subdivision voting at the election vote for incurring the debt, the authority to incur the debt in accordance with Article IX, Section V, Paragraph I or II of the Constitution of Georgia is given to the proper officers of the county, municipality, or

political subdivision. (Ga. L. 1904, p. 85, § 3; Civil Code 1910, § 465; Code 1933, § 87-604; Ga. L. 1983, p. 3, § 57.)

OPINIONS OF THE ATTORNEY GENERAL

Counties and municipalities may incur debts, including bank loans, if approved by a majority of qualified voters, as Ga. Const. 1976, Art. IX, Sec. VII, Para. I (see Ga. Const. 1983, Art. IX, Sec. V, Paras. I and II), amended the two-thirds vote requirement in the statute to require only a simple majority. 1977 Op. Att'y Gen. No. 77-51.

RESEARCH REFERENCES

ALR. — Inclusion in assessment for public improvement of amount to cover delinquencies as contrary to constitutional guaranties, 40 ALR 1352; 42 ALR 1185.

36-80-14. Annual sinking fund for unbonded debt.

Any county, municipality, or political subdivision of this state which incurs an indebtedness under Code Sections 36-80-10 through 36-80-13 and this Code section shall, on or before so doing, or annually thereafter, provide, without incurring further debt thereby, an annual sum sufficient in amount to pay the principal and interest of the debt within 30 years from the date of the incurring of the indebtedness. (Ga. L. 1904, p. 85, § 5; Civil Code 1910, § 467; Code 1933, § 87-605; Ga. L. 1993, p. 91, § 36.)

JUDICIAL DECISIONS

Cited in American Sur. Co. v. City of Thomasville, 73 F.2d 584 (5th Cir. 1934).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 5, 323, 324.

ALR. — Liability of officer for loss of sinking fund through failure of bank, 25 ALR 1358.

Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 ALR 220.

Existing sinking fund as a factor in determining whether indebtedness or proposed indebtedness of municipality or other political subdivision exceeds constitutional or statutory limit, 125 ALR 1393.

36-80-15. Allocation and expenditure of proceeds from timber sales from military installations and facilities.

(a) The purpose of this Code section is to grant and prescribe the manner of expenditure of funds received by this state from the federal government from sales of timber from military installations and mili-

tary facilities of the United States, as authorized by subsection (e) of Section 2665 of Title 10 of the United States Code, as amended by the Military Construction Authorization Act of 1982.

(b) The amount of such funds received by the state from sales from each military installation or facility shall be allocated to the county in which the installation or facility is located. If an installation or facility is located in more than one county, the amount allocated to each such county shall be the total amount derived from sales from that installation or facility times a fraction the numerator of which is the number of acres of the installation or facility in the county and the denominator of which is the number of acres of the installation or facility in the state.

(c) Of the amount allocated to each county, 50 percent shall be paid to the county governing authority and 50 percent shall be paid to the county board of education. If, however, there is an independent school district in any county to which funds are allocated, then 50 percent of the funds allocated to the county shall be paid to the county governing authority and the remaining 50 percent shall be proportionally divided among the county school district and each independent school district in the county according to the ratio which the average daily attendance for each system bears to the total average daily attendance for all systems in the county, except that if pupils in one district attend school in another district they shall for purposes of determining average daily attendance be considered as attending school in the district in which they reside.

(d) Funds received by a county governing authority shall be used only on the county road system. Funds received by a board of education may be used for any purpose for which the board may lawfully expend public funds.

(e) Funds received by the state as described in this Code section shall be administered by the state treasurer and distributed by the state treasurer as provided in this Code section not less often than annually. (Ga. L. 1982, p. 853, § 1; Code 1981, § 36-80-15, enacted by Ga. L. 1982, p. 853, § 2; Ga. L. 1987, p. 3, § 36; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, §§ 3, 4/SB 296.)

The 2010 amendment, effective July 1, 2010, in the middle of subsection (e), substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" and substituted "state treasurer" for "director".

36-80-16. Local Government Authorities Registration.

(a) This Code section shall be known and may be cited as the "Local Government Authorities Registration Act."

(b) The General Assembly finds that there is a need for the state to create and maintain a record of all local government authorities. Such

a record can best be maintained through annual registration of all local government authorities.

(c) The purpose of this Code section is to prescribe a registration process for all local government authorities authorized to operate in the State of Georgia by general statute, local law, or local constitutional amendment.

(d) As used in this Code section, the term:

(1) "Debt" includes all long-term or short-term credit obligations including, but not limited to, mortgages, bonds, loans, notes, interest-bearing warrants, and advances. For the purposes of this Code section, debt shall also include lease-purchase obligations.

(2) "Local government authority" includes without limitation instrumentalities of one or more local governments created to fulfill a specialized public purpose or any other legally created organization that has authority to issue debt for a public purpose independent of a county or municipality, not to include state authorities. Local government authorities include joint authorities, regional authorities, hospital authorities, housing authorities, residential care facilities for the elderly authorities, resource recovery development authorities, solid waste management authorities, downtown development authorities, airport authorities, industrial, payroll and other development authorities, transit authorities, water and sewer authorities, parking authorities, recreation authorities, stadium and coliseum authorities, building authorities, public service authorities, or any other local government authority regardless of name. Such local government authorities may have been created by local constitutional amendment, general statute, or local law.

(e) All local government authorities authorized to operate in the State of Georgia must register annually with the Department of Community Affairs.

(f) Any local government authority which fails to register with the Department of Community Affairs shall not incur any debt or credit obligations until such time as it meets the registration requirement. Failure to register shall not have any adverse affect on any outstanding debt or credit obligation.

(g) The Department of Community Affairs shall establish registration and reporting procedures for local government authorities. Such procedures shall include, but are not limited to, information on the authority's legal name, members, function, date and means of creation, contact person, address, and telephone number.

(h) The Department of Community Affairs shall establish reasonable fees for the work related to administration and enforcement of this

Code section; provided, however, no fee shall be charged or allowed for the annual registration as required in this Code section.

(i) The Department of Community Affairs shall maintain a certified list of registered local government authorities, available on request. The department shall forward annually to the judge of the probate court in any affected county the registration information for all authorities operating in that county.

(j) Local government authorities shall initially register on or before January 1, 1996, and shall register on or before January 1 of each year thereafter. (Code 1981, § 36-80-16, enacted by Ga. L. 1995, p. 560, § 1; Ga. L. 1996, p. 6, § 36; Ga. L. 1998, p. 128, § 36; Ga. L. 1998, p. 596, § 1.)

Administrative rules and regulations. — Local government efficiency grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-5.

Law reviews. — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

36-80-16.1. PILOT restriction; payments in lieu of taxes defined; financing capital projects.

(a) This Code section shall be known and may be cited as the "PILOT Restriction Act."

(b) As used in this Code section, the term "payments in lieu of taxes" means payments made directly or indirectly:

(1) Primarily in consideration of the issuance of revenue bonds or other revenue obligations and the application by the issuer of such bonds or other obligations of the proceeds of such bonds or other obligations to finance all or a portion of the costs of acquiring, constructing, equipping, or installing a capital project; and

(2) In further consideration of the laws of the State of Georgia granting an exemption from ad valorem taxation for such capital project,

to or for the account of the issuer of revenue bonds or other revenue obligations or the public bodies whose consent would otherwise be required, in the case of the separate payments provided for under subsection (d) of this Code section. Payments in lieu of taxes shall be deemed to be payments in lieu of taxes for educational purposes in the same proportion that property taxes for educational purposes would bear to total property taxes on such capital project if the project were subject to ad valorem property taxation. The term "payments in lieu of taxes" shall not include payments made primarily in consideration for

the use or occupancy of property, including but not limited to lease payments or rent paid under a lease, regardless of whether or not the lessee or tenant holds an interest that is taxable for property tax purposes.

(c)(1) No local government authority, as defined in Code Section 36-80-16, shall be authorized to issue revenue bonds or other revenue obligations to finance, in whole or in part, any capital project if the terms governing such revenue bonds or other revenue obligations provide for such capital project to be used primarily by a nongovernmental user or users that have no taxable property interest in any portion of such capital project and provide for such revenue bonds or other revenue obligations to be repaid, in whole or in part, through payments in lieu of taxes made by a nongovernmental user or users, unless:

(A) Each of the local governments that have property tax levying authority in the area in which such capital project is located consents by ordinance or resolution to the use of payments in lieu of taxes for such purposes; and

(B) In the case of payments in lieu of taxes for educational purposes, a consent is obtained that covers the use for such purposes of such payments in accordance with subsection (d) of this Code section, except that the terms governing such revenue bonds or other revenue obligations may provide for one or more of the public bodies, whose consent would otherwise be required, instead to receive, in such capacity, separate payments in lieu of taxes at least equal to the property taxes that such public body or bodies would have received if the capital project were subject to ad valorem taxation or in such other amount or amounts as may be agreed to by such public body or bodies.

(2) No such revenue bonds or other revenue obligations may be so issued without compliance with the requirements of paragraph (1) of this subsection.

(d)(1) When a capital project is located within the boundaries of a municipality with an independent school system, a consent by the municipality under subparagraph (c)(1)(B) of this Code section shall cover the use of payments in lieu of taxes for educational purposes, provided that, if the board of education of the independent school system is empowered to set the ad valorem tax millage rate for educational purposes and the legislative body of the municipality does not have the authority to modify such rate set by the board of education, the requisite consent shall be that of the board of education of the independent school system rather than that of the legislative body of the municipality.

(2) For those municipalities which do not have an independent school system, a consent by the municipality under subparagraph (c)(1)(B) of this Code section shall cover the use of payments in lieu of taxes for educational purposes if the county board of education or the local legislative body of the county, whichever is authorized to establish the ad valorem tax millage rate for educational purposes, consents to such coverage by resolution duly adopted by said board of education or local legislative body, as appropriate.

(3) The use of payments in lieu of taxes levied for county school district purposes shall be covered by a consent under subparagraph (c)(1)(B) of this Code section if the board of education of the county school district or the local legislative body of the county, whichever is authorized to establish the ad valorem tax millage rate for educational purposes, consents to such coverage by resolution duly adopted by said board of education or local legislative body, as appropriate.

(4) The use of payments in lieu of taxes levied for school district purposes within the boundaries of a consolidated government shall be covered by a consent under subparagraph (c)(1)(B) of this Code section if the board of education of such school district or the local legislative body of the consolidated government, whichever is authorized to establish the ad valorem tax millage rate for educational purposes within the school district, consents to such coverage by resolution duly adopted by said board of education or local legislative body, as appropriate.

(e) This Code section shall not affect revenue bonds or other revenue obligations which any local government authority has issued or which have been judicially validated on or before April 22, 2009. Each county board of tax assessors shall continue, notwithstanding this Code section, to exercise its powers and discharge its duties and is specifically authorized, without limitation, to use a method or methods of valuation for leases related to revenue bonds or other revenue obligations issued by a local government authority for a capital project or projects to be leased primarily to a nongovernmental user or users, based on assessments of the increasing interest of the nongovernmental user or users in the real or personal property, or both, over the term of the lease, or to use a simplified method or methods employing a specified percentage or specified percentages of such leasehold interests. Each local government authority that is authorized to issue revenue bonds or other revenue obligations secured by a taxable property interest, such as a taxable lease of a capital project, shall continue, notwithstanding this Code section, to exercise its powers and discharge its duties, including, in the case of development authorities, the development of trade, commerce, industry, and employment opportunities. Any local government or local government authority which directly or indirectly receives

payments in lieu of taxes shall be authorized to use the same for any governmental or public purpose of such local government or local government authority. (Code 1981, § 36-80-16.1, enacted by Ga. L. 2009, p. 158, § 3/HB 63.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "the term" was inserted in the introductory language of subsection (b) and "April 22, 2009" was substituted for "the effective date of this Code section" in the first sentence of subsection (e).

JUDICIAL DECISIONS

Valuation of leasehold estates. — Trial court erred in dismissing for failure to state a claim upon which relief could be granted a taxpayer's petition seeking a declaration that the valuation method a county board of assessors and the development authority of the county used for leasehold estates arising from a local development authority sale-leaseback bond transaction was illegal and in granting the authority's motion for judgment on the pleadings because the taxpayer made material allegations that could be supported by admissible evidence on the issue of whether the valuation method fairly and justly approximated the fair market value of a bond transaction leasehold estate, and the board and authority failed to show that they were clearly entitled to judgment; although O.C.G.A. § 36-80-16.1(e) gave county boards of tax assessors authority to use simplified methods for determining the value of a bond transaction leasehold estate, the statute did not relieve the board and authority from their duty to value the leasehold estate at the estate's fair market value, and any contention that the statute did allow the board and authority to value a bond transaction leasehold estate at less than the estate's fair market value would make the statute illegal and unconstitutional. Sherman v. Fulton County Bd. of Assessors, 288 Ga. 88, 701 S.E.2d 472 (2010).

36-80-17. Authorization to contract for utility services; conditions and limitations.

(a) As used in this Code section, the term "local authority" means an instrumentality of one or more local governments created to fulfill a specialized public purpose or any other legally created organization that has authority to issue debt for a public purpose independent of a county or municipality, regardless of name; provided, however, that the term "local authority" does not include a state authority. A local authority may have been created by local constitutional amendment, general statute, or local law.

(b) The governing body of any local authority which is authorized to provide electric, natural gas, or water utility services in this state may authorize the execution of one or more contracts which specify the rates, fees, or other charges which will be charged and collected by the local authority for electric, natural gas, or water utility services to be provided by the local authority to one or more of its utility customers. Any such contract shall be subject to the following conditions and limitations:

(1) No such contract shall be for a term in excess of ten years;

(2) Any such contract which is for a term in excess of two years shall include commercially reasonable provisions under which the rates, fees, or other charges shall be adjusted with respect to inflationary or deflationary factors affecting the provision of the utility service in question; and

(3) Any such contract shall include commercially reasonable provisions relieving the local authority from its obligations under the contract in the event that the local authority's ability to comply with the contract is impaired by war, natural disaster, catastrophe, or any other emergency creating conditions under which the local authority's compliance with the contract would become impossible or create a substantial financial burden upon the local authority or its taxpayers. (Code 1981, § 36-80-17, enacted by Ga. L. 1998, p. 1113, § 3.)

JUDICIAL DECISIONS

Cited in City of Atlanta v. City of College Park, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

36-80-18. Environmental assessment required prior to acquiring real property for recreational area; continuing assessment.

(a) A county, municipality, local board of education, or public authority created by local or general law may not accept a gift of or otherwise acquire real property which is intended to be used for a park or recreational area unless, prior to such acceptance or acquisition, such political subdivision or authority retains an environmental health engineer for a phase 1 environmental assessment to examine the property for contaminants, hidden methane gas, and similar hazards which would be dangerous to public use of such property and receives a report regarding any discovered dangers. If such report discloses significant dangers, the property shall not be accepted or acquired unless the danger is eliminated; otherwise, such property may be accepted or acquired.

(b) At least every 20 years after property has been accepted or acquired pursuant to subsection (a) of this Code section, the political subdivision or authority shall retain an environmental health engineer to retest the property for hazards. (Code 1981, § 36-80-18, enacted by Ga. L. 1999, p. 556, § 1.)

JUDICIAL DECISIONS

Cited in Ware v. Henry County Water & Sewerage Auth., 258 Ga. App. 778, 575 S.E.2d 654 (2002).

36-80-19. General codification of ordinances and resolutions; publication and availability of code; official state repository for general codifications.

(a) As used in this Code section, the term "local governing authority" means the governing authority of each municipality and county in this state.

(b)(1) Each local governing authority shall, no later than January 1, 2002, provide for the general codification of all the ordinances and resolutions of that unit of local government having the force and effect of law. Except as provided in paragraph (2) of this subsection, the general codification shall be adopted by such local governing authority by ordinance and shall be published promptly, together with all amendments thereto and such local Acts of the General Assembly pertaining to the governing authority, codes of technical regulations, and other rules and regulations as the local governing authority may specify. This compilation shall be known and cited officially as "The Code of _____, Georgia."

(2) In cities having a population of 5,000 or less according to the most recent federal decennial census, the governing authority may at its discretion substitute a compilation of ordinances and resolutions for the codification required under paragraph (1) of this subsection. In such case, the compiled ordinances and resolutions shall, at a minimum, be arranged in a logical manner, such as by date, and should preferably include an index or other finding aids. In such case, the compilation shall be known as "The Compiled Ordinances and Resolutions of _____, Georgia" and shall be distributed and made available in the same manner provided in this Code section for codifications.

(3) Copies of the code, at the discretion of the local governing authority, shall be furnished to officers, departments, and agencies of the local governing authority. The code shall be made available for purchase by the public at a reasonable price as fixed by the local governing authority. Amendments to a code shall be incorporated into the general codification and published at least annually.

(c) The local governing authority shall cause each ordinance and each amendment to the general codification to be printed promptly following its adoption, and the printed ordinances and amendments shall be made available for purchase by the public at reasonable prices

to be fixed by the local governing authority. Following publication of the first code under this Code section and at all times thereafter, the ordinances and amendments shall be printed in substantially the same style as the code currently in effect in such unit of local government and shall be suitable in form for incorporation therein. The local governing authority shall make such further arrangements as deemed desirable with reproduction and distribution of any current changes in or additions to codes of technical regulations and other rules and regulations included in the code.

(d) Each such general codification shall be:

(1) Made available by posting such codification on the Internet; or

(2) In counties which have established a county law library, furnished as a copy to the county law library. (Code 1981, § 36-80-19, enacted by Ga. L. 2000, p. 865, § 3; Ga. L. 2001, p. 1219, § 4; Ga. L. 2008, p. 267, § 3/SB 482.)

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

36-80-20. Decal or seal required on vehicles owned or leased by any county, municipality, regional commission, school system, commission, board, or public authority.

(a) Every motor vehicle which is owned or leased by any county, municipality, regional commission, county or independent school system, commission, board, or public authority or which has been purchased or leased by any public official or public employee with public funds shall have affixed to the front door on each side of such vehicle a clearly visible decal or seal containing the name of or otherwise identifying such governmental entity.

(b) The requirements of subsection (a) of this Code section shall not apply to:

(1) Any vehicle used for law enforcement or prosecution purposes; or

(2) Any vehicle owned or leased by a county, municipality, or public housing authority expressly excepted from the provisions of this Code section by ordinance or resolution adopted by the governing authority of a county, municipality, or public housing authority following a public hearing on the subject held no more than 14 days prior to the adoption of the resolution or ordinance. Any such public hearing shall be advertised one time in the legal organ of the county at least seven days prior to the hearing date. Any such exemption under this paragraph shall be for a period of no more than 12 months at a time

and may be renewed annually following a public hearing as required by this paragraph and advertisement as required by this paragraph. (Code 1981, § 36-80-20, enacted by Ga. L. 2000, p. 486, § 1; Ga. L. 2001, p. 1059, § 1; Ga. L. 2008, p. 181, § 16/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted "regional commission" for "regional development center" near the beginning of subsection (a).

Cross references. — Operation of vehicle owned or leased by the state or any branch, department, agency, commission, board, or authority of the state unless decal or seal affixed to front door, § 50-19-2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 36-89-1, as enacted by Ga. L. 2000, p. 486, § 1, was redesignated as Code Section 36-80-20.

Pursuant to Code Section 28-9-5, in 2001, "or" was added at the end of paragraph (b)(1).

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

36-80-21. Definitions; electronic transmission of budgets.

(a) As used in this Code section, the term:

(1) "Audit" means an annual report of the financial affairs and transactions of a county, municipality, or consolidated government as required by Code Section 36-81-7 and an annual report of a school district as required by rule and regulation of the State Board of Education.

(2) "Budget" means:

(A) A plan of financial operation embodying an estimate of proposed expenditures during a budget period and the proposed means of financing such expenditures for a county, municipality, or consolidated government as required by Article 1 of Chapter 81 of this title and such plans of financial operation for the general fund, each special revenue fund, each debt service fund, each internal service fund, each enterprise fund, and each fiduciary fund in use by such unit of local government as such funds are defined in Code Section 36-81-2; and

(B) A plan of financial operation of a school district as required by rule and regulation of the State Board of Education and paragraph (3) of subsection (a) of Code Section 20-2-167.

(3) "Local government" means any local school board or a governing authority of a county or municipality having an annual budget in excess of $1 million.

(4) "Vinson Institute" means the Carl Vinson Institute of Government of the University of Georgia.

(5) "Website" means a website which shall be developed, operated, and maintained by the Vinson Institute that shall allow the public to

review and analyze the information identified in subsections (c) and (d) of this Code section at no cost to the public or the local governments that post to the website.

(b) Each local government shall post the information required by this Code section to the website for each fiscal year beginning on and after January 1, 2011.

(c) As soon as a local government has adopted, by ordinance or resolution, a final budget for an upcoming fiscal year, a copy of the budget shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable. In no event shall the PDF copy of the budget be transmitted to the Vinson Institute more than 30 calendar days following the adoption of the budget ordinance or resolution.

(d) After the close of a fiscal year, a copy of the audit of each local government shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable. The PDF copy of the audit of a county, municipality, or consolidated government shall be transmitted to the Vinson Institute concurrent with submission of the audit to the state auditor as required by subsection (d) of Code Section 36-81-7. The audit of a school district shall be transmitted to the Vinson Institute concurrent with submission of the audit to the State Board of Education as required by rule and regulation of the State Board of Education.

(e) Concurrent with the submission of the annual report by local law enforcement agencies required by division (u)(4)(D)(iii) of Code Section 16-13-49, a copy of such report shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable.

(f) The Vinson Institute shall, subject to appropriation by the General Assembly, develop the website for use by local governments under this Code section and provide all necessary training for local government officials in its operation in order to allow local governments to upload the information required by this Code section on a timely basis at no cost to such local governments. (Code 1981, § 36-80-21, enacted by Ga. L. 2010, p. 519, § 1/HB 122; Ga. L. 2011, p. 752, § 36/HB 142.)

Effective date. — This Code section became effective July 1, 2010.

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (a)(2)(A).

Editor's notes. — This Code section formerly pertained to ownership of privately constructed water or sewage system, exemptions, and termination of provisions. The former Code section was based on Code 1981, § 36-80-21, enacted

by Ga. L. 2007, p. 393, § 1/HB 471 and was repealed by Ga. L. 2007, p. 393, § 1/HB 471, effective January 1, 2009.

36-80-22. Definitions; restrictions; requirements.

(a) As used in this Code section, the term:

(1) "Agreement" means any written private contract for solid waste collection services between a firm and any commercial client.

(2) "Commercial client" means any private, nonresidential business entity or person required to have a business license who contracts with a firm for solid waste collection services.

(3) "Displacement" means the displacing of any firm's agreement by annexation, deannexation, or incorporation of a municipality.

(4) "Firm" means a private solid waste collection firm.

(5) "Governmental action" means the invalidation of any firm's existing agreement by a local government by a law, rule, or regulation, provided that such law, rule, or regulation is not enacted pursuant to an emergency as declared by the governing authority of the local government.

(6) "Local government" means a county, municipal corporation, or any county-municipal consolidated government.

(b) Prior to a firm receiving any protection under this Code section, the firm shall first establish that at least 30 days prior to the effective date of any governmental action or displacement, the firm is providing solid waste collection services in the county or municipality pursuant to an agreement.

(c) A firm's agreement with a private commercial entity or person that meets the requirements of subsection (b) of this Code section shall not be invalidated by any governmental action or displacement. This subsection shall not prevent commercial clients from discontinuing an agreement with a firm pursuant to the terms of any agreement such commercial client may have with a firm.

(d) Notwithstanding the provisions of this Code section, in order to protect the public health and safety, a local government shall have the authority to adopt local laws, rules, or regulations establishing standards and procedures for the collection and disposal of solid waste and recyclables generated by a commercial client. (Code 1981, § 36-80-22, enacted by Ga. L. 2008, p. 1019, § 1/SB 154.)

36-80-23. Prohibition on immigration sanctuary policies by local governmental entities; certification of compliance.

(a) As used in this Code section, the term:

(1) "Federal officials or law enforcement officers" means any person employed by the United States government for the purpose of enforcing or regulating federal immigration laws and any peace officer certified by the Georgia Peace Officer Standards and Training Council where such federal official or peace officer is acting within the scope of his or her employment for the purpose of enforcing federal immigration laws or preserving homeland security.

(2) "Immigration status" means the legality or illegality of an individual's presence in the United States as determined by federal law.

(3) "Immigration status information" means any information, not including any information required by law to be kept confidential but otherwise including but not limited to any statement, document, computer generated data, recording, or photograph, which is relevant to immigration status or the identity or location of an individual who is reasonably believed to be illegally residing within the United States or who is reasonably believed to be involved in domestic terrorism as that term is defined in Code Section 16-4-10 or a terroristic act as that term is defined by Code Section 35-3-62.

(4) "Local governing body" means any political subdivision of this state, including any county, consolidated government, municipality, authority, school district, commission, board, or any other local public body corporate, governmental unit, or political subdivision.

(5) "Local official or employee" means any elected or appointed official, supervisor or managerial employee, contractor, agent, or certified peace officer acting on behalf of or in conjunction with a local governing body.

(6) "Sanctuary policy" means any regulation, rule, policy, or practice adopted by a local governing body which prohibits or restricts local officials or employees from communicating or cooperating with federal officials or law enforcement officers with regard to reporting immigration status information while such local official or employee is acting within the scope of his or her official duties.

(b) No local governing body, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact, adopt, implement, or enforce any sanctuary policy.

(c) Any local governing body that acts in violation of this Code section shall be subject to the withholding of state funding or state administered federal funding other than funds to provide services specified in subsection (c) of Code Section 50-36-1.

(d) The Department of Community Affairs, the Department of Transportation, or any other state agency that provides funding to local

governing bodies may require certification of compliance with this Code section as a condition of funding. (Code 1981, § 36-80-23, enacted by Ga. L. 2009, p. 734, § 1/SB 20.)

Law reviews. — For article, "State Government: Illegal Immigration Reform and Enforcement Act of 2011," see 28 Ga. St. U. L. Rev. 51 (2011).

CHAPTER 81

BUDGETS AND AUDITS

Article 1

Local Government Budgets and Audits

Sec.

36-81-1. Legislative intent.
36-81-2. Definitions.
36-81-3. Establishment of fiscal year; requirement of annual balanced budget; adoption of budget ordinances or resolutions generally; budget amendments; uniform chart of accounts.
36-81-4. Appointment of budget officer; performance of duties by governing authority in absence of appointment; utilization of executive budget.
36-81-5. Preparation of proposed budget; submission to governing authority; public review of proposed budget; notice and conduct of budget hearing.
36-81-6. Adoption of budget ordinance or resolution; form of budget.
36-81-7. Requirement of audits; conduct of audits; audit reports; forwarding of audits to state auditor; failure to file or correct deficiencies; public inspection.
36-81-8. Annual local government finances reports and local independent authority indebtedness reports; assistance by Department of Community Affairs; community indicators report.
36-81-8.1. Definitions; grant certification forms; filing with state auditor; forfeiture of funds for noncompliance; no exemption from liability.
36-81-9. Effect of article on other laws generally.
36-81-10. Effect of article on right to make expenditures and raise revenues; effect on home rule powers.
36-81-11. Budget for implementing security plans subject to approval by the governing authority.

Article 2

Audits as Condition for Receipt of State Assistance

36-81-20. Audits accepted by state; additional audits; section not to limit state's audit authority.

Administrative rules and regulations. — Life sciences facilities fund, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Affairs, Chapter 110-25.

RESEARCH REFERENCES

ALR. — Negotiability of county, municipal, school, state, or town warrants, 36 ALR 949.

Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 ALR 1027.

ARTICLE 1

LOCAL GOVERNMENT BUDGETS AND AUDITS

Administrative rules and regulations. — Uniform charts of accounts, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia

Department of Community Affairs, Chapter 110-15-1.

36-81-1. Legislative intent.

The intent of this article is to provide minimum budget, accounting, and auditing requirements for local governments so as to provide local taxpayers with an opportunity to gain information concerning the purposes for which local revenues are proposed to be spent and are actually spent and to assist local governments in generally improving local financial management practices while maintaining, preserving, and encouraging the principle of home rule over local matters. It is the further intent of this article to provide a mechanism through which appropriate information may be collected to assist state and local policy makers in carrying out their lawful responsibilities. It is also the intent of this article to provide for the collection and reporting of information so as to assist local taxpayers and local policy makers in understanding and evaluating local government service delivery and operations. (Ga. L. 1980, p. 1738, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1997, p. 1575, § 1.)

36-81-2. Definitions.

As used in this article, the term:

(1) "Budget" means a plan of financial operation embodying an estimate of proposed expenditures during a budget period and the proposed means of financing them.

(2) "Budget officer" means that local government official charged with budget preparation and administration for the local government. The official title of the local government budget officer shall be as provided by local law, charter, ordinance, or appropriate resolution of the governing authority.

(3) "Budget ordinance," "ordinance," or "resolution" means that governmental action which appropriates revenues and fund balances for specified purposes, functions, or activities for a budget period.

(4) "Budget period" means the period for which a budget is proposed or a budget ordinance or resolution is adopted.

(5) "Capital projects fund" means a fund used to account for financial resources to be used for the acquisition or construction of major capital facilities other than those financed by resources from proprietary type activities which are accounted for in enterprise funds or those financed with funds held by the local government in a trustee capacity.

(6) "Debt service fund" means a fund used to account for the accumulation of resources for and the payment of general long-term debt principal and interest.

(7) "Enterprise fund" means a fund used to account for operations that are financed and operated in a manner similar to private business enterprises where the intent of the governing authority is that the costs of providing goods and services to the general public on a continuing basis be financed or recovered primarily through user charges or where the governing authority has decided that periodic determination of revenues earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes. For purposes of this paragraph, the term "costs" means expenses, including depreciation.

(8) "Fiduciary fund" means those trust and agency funds used to account for assets held by a local government in a trustee capacity or as an agent for individuals, private organizations, other governmental units, or other funds.

(9) "Fiscal year" means the period for which a budget is proposed or a budget ordinance or resolution is adopted for the local government's general fund, each special revenue fund, if any, and each debt service fund, if any.

(10) "Fund" means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which is segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

(11) "General fund" means the fund used to account for all financial resources except those required to be accounted for in another fund.

(12) "Governing authority" means that official or group of officials responsible for governance of the unit of local government.

(13) "Internal service fund" means a fund used to account for the financing of goods or services provided by one department or agency to other departments or agencies of the governmental unit or to other governmental units on a cost-reimbursement basis.

(14) "Legal level of control" means the lowest level of budgetary detail at which a local government's management or budget officer may not reassign resources without approval of the governing authority. The legal level of control shall be, at a minimum, expenditures for each department for each fund for which a budget is required. This does not preclude the governing authority of a local government from establishing a legal level of control at a more detailed level of budgetary control than the minimum required legal level of control.

(15) "Special revenue fund" means a fund used to account for the proceeds of specific revenue sources, other than those for major capital projects or those held by the government in a trustee capacity, that are legally restricted to expenditure for specified purposes.

(16) "Unit of local government," "unit," or "local government" means a municipality, county, consolidated city-county government, or other political subdivision of the state. Such terms do not include any local school district or board of education. For purposes of this paragraph, "county" includes any county officer who is paid in whole or in part on a salary basis and over whom the county governing authority exercises budgetary authority. (Ga. L. 1980, p. 1738, § 3; Ga. L. 1984, p. 22, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1998, p. 1611, § 1.)

36-81-3. Establishment of fiscal year; requirement of annual balanced budget; adoption of budget ordinances or resolutions generally; budget amendments; uniform chart of accounts.

(a) The governing authority shall establish by ordinance, local law, or appropriate resolution a fiscal year for the operations of the local government.

(b)(1) Each unit of local government shall adopt and operate under an annual balanced budget for the general fund, each special revenue fund, and each debt service fund in use by the local government. The annual balanced budget shall be adopted by ordinance or resolution and administered in accordance with this article.

(2) Each unit of local government shall adopt and operate under a project-length balanced budget for each capital projects fund in use by the government. The project-length balanced budget shall be adopted by ordinance or resolution in the year that the project initially begins and shall be administered in accordance with this article. The project-length balanced budget shall appropriate total expenditures for the duration of the capital project.

(3) A budget ordinance or resolution is balanced when the sum of estimated revenues and appropriated fund balances is equal to appropriations.

(4) Nothing contained in this Code section shall preclude a local government from adopting a budget for any funds used by the local government other than those specifically identified in paragraphs (1) and (2) of this subsection, including enterprise funds, internal service funds, and fiduciary funds.

(c) For each fiscal year beginning on or after January 1, 1982, each unit of local government shall adopt and utilize a budget ordinance or resolution as provided in this article.

(d) Nothing contained in this Code section shall preclude a local government from amending its budget so as to adapt to changing governmental needs during the budget period. Amendments shall be made as follows, unless otherwise provided by charter or local law:

(1) Any increase in appropriation at the legal level of control of the local government, whether accomplished through a change in anticipated revenues in any fund or through a transfer of appropriations among departments, shall require the approval of the governing authority. Such amendment shall be adopted by ordinance or resolution;

(2) Transfers of appropriations within any fund below the local government's legal level of control shall require only the approval of the budget officer; and

(3) The governing authority of a local government may amend the legal level of control to establish a more detailed level of budgetary control at any time during the budget period. Said amendment shall be adopted by ordinance or resolution.

(e) The Department of Community Affairs, in cooperation with the Association County Commissioners of Georgia and the Georgia Municipal Association, shall develop local government uniform charts of accounts. The uniform charts of accounts, including any subsequent revisions thereto, shall require approval of the state auditor prior to final adoption by the Department of Community Affairs. All units of local government shall adopt and use such initial uniform charts of accounts within 18 months following adoption of the uniform charts of accounts by the Department of Community Affairs. The department shall adopt the initial local government uniform charts of accounts no later than December 31, 1998. The department shall be authorized to grant a waiver delaying adoption of the initial uniform charts of accounts for a period of time not to exceed two years upon a clear demonstration that conversion of the accounting system of the requesting local government, within the time period specified in this subsection, would be unduly burdensome.

(f) The department's implementation of subsection (e) of this Code section shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1980, p. 1738, § 4; Ga. L. 1987, p. 3, § 36; Ga. L. 1997, p. 1575, § 2; Ga. L. 1998, p. 1611, § 2; Ga. L. 2000, p. 1395, § 1.)

Cross references. — Audits of counties and municipalities, § 36-60-8. Fiscal year for state and units of state government, § 45-6-2. State auditor generally, T. 50, C. 6.

JUDICIAL DECISIONS

Cited in May v. County Comm'rs, 227 Ga. App. 878, 490 S.E.2d 546 (1997); Pelphrey v. Cobb County, 547 F.3d 1263 (11th Cir. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Regional development center is not subject to the minimum budget and auditing requirements set forth in O.C.G.A. Art. 1, Ch. 81, T. 36; however, a center is subject to public accountability under other provisions of state law. 1990 Op. Att'y Gen. No. 90-37.

Budget amendments. — Requirement that budget amendments be adopted by ordinance or resolution is not satisfied by the adoption of a "blanket amendment" in the local government's budget resolution. 1999 Op. Att'y Gen. No. 99-3.

Adoption of a blanket amendment in local government's budget resolution. — Requirement that amendments to the budgets of local governments be adopted by ordinance or resolution is not satisfied by the adoption of a "blanket amendment" in the local government's budget resolution. 1999 Op. Att'y Gen. No. 99-3.

36-81-4. Appointment of budget officer; performance of duties by governing authority in absence of appointment; utilization of executive budget.

(a) Unless provided to the contrary by local charter or local Act, each local government may appoint a budget officer to serve at the will of the governing authority.

(b) In those units of local government in which there is no budget officer, the governing authority shall perform all duties of the budget officer as set forth in Code Section 36-81-5.

(c) Nothing in this Code section shall preclude the utilization of an executive budget, under which an elected or appointed official, authorized by charter or local law and acting as the chief executive of the governmental unit, exercises the initial budgetary policy-making function, while another individual, designated as provided in this Code section as budget officer, exercises the administrative functions of budgetary preparation and control. (Ga. L. 1980, p. 1738, § 5.)

36-81-5. Preparation of proposed budget; submission to governing authority; public review of proposed budget; notice and conduct of budget hearing.

(a) By the date established by each governing authority, in such manner and form as may be necessary to effect this article, and consistent with the local government's accounting system, the budget

officer shall prepare a proposed budget for the local government for the ensuing budget period.

(b) The proposed budget shall, at a minimum, be an estimate of the financial requirements at the legal level of control for each fund requiring a budget for the appropriate budget period and shall be in such form and detail, with such supporting information and justifications, as may be prescribed by the budget officer or the governing authority. The budget document, at a minimum, shall provide, for the appropriate budget period, a statement of the amount budgeted for anticipated revenues by source and the amount budgeted for expenditures at the legal level of control. In accordance with the minimum required legal level of control, the budget document shall, at a minimum, provide a statement of the amount budgeted for expenditures by department for each fund for which a budget is required. This does not preclude the governing authority of a local government from preparing a budget document or establishing a legal level of control at a more detailed level of budgetary control than the minimum required legal level of control.

(c) On the date established by each governing authority, the proposed budget shall be submitted to the governing authority for that body's review prior to enactment of the budget ordinance or resolution.

(d) On the day that the proposed budget is submitted to the governing authority for consideration, a copy of the budget shall be placed in a public location which is convenient to the residents of the unit of local government. The governing authority shall make every effort to provide convenient access to the residents during reasonable business hours so as to accord every opportunity to the public to review the budget prior to adoption by the governing authority. A copy of the budget shall also be made available, upon request, to the news media.

(e) A statement advising the residents of the local unit of government of the availability of the proposed budget shall be published in a newspaper of general circulation within the jurisdiction of the governing authority. The notice shall be published during the week in which the proposed budget is submitted to the governing authority. In addition, the statement shall also advise the residents that a public hearing will be held at which time any persons wishing to be heard on the budget may appear. The statement shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear.

(f) At least one week prior to the meeting of the governing authority at which adoption of the budget ordinance or resolution will be considered, the governing authority shall conduct a public hearing, at which time any persons wishing to be heard on the budget may appear.

(g)(1) The governing authority shall give notice of the time and place of the budget hearing required by subsection (f) of this Code section at least one week before the budget hearing is held. The notice shall be published in a newspaper of general circulation within the jurisdiction of the governing authority. The statement shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear.

(2) The notice required by paragraph (1) of this subsection may be included in the statement published pursuant to subsection (e) of this Code section in lieu of separate publication of the notice.

(h) Nothing in this Code section shall be deemed to preclude the conduct of further budget hearings if the governing body deems such hearings necessary and complies with the requirements of subsection (e) of this Code section. (Ga. L. 1980, p. 1738, § 6; Ga. L. 1984, p. 818, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1998, p. 1611, § 3.)

36-81-6. Adoption of budget ordinance or resolution; form of budget.

(a) On a date after the conclusion of the hearing required in subsection (f) of Code Section 36-81-5, the governing authority shall adopt a budget ordinance or resolution making appropriations in such sums as the governing authority may deem sufficient, whether greater or less than the sums presented in the proposed budget. The budget ordinance or resolution shall be adopted at a public meeting which shall be advertised in accordance with the procedures set forth in subsection (e) of Code Section 36-81-5 at least one week prior to the meeting.

(b) The budget may be prepared in any form that the governing authority deems most efficient in enabling it to make the fiscal policy decisions embodied in the budget, but such budget shall be subject to the provisions of this article. (Ga. L. 1980, p. 1738, § 7; Ga. L. 1984, p. 818, § 2; Ga. L. 1987, p. 3, § 36; Ga. L. 1998, p. 1611, § 4.)

36-81-7. Requirement of audits; conduct of audits; audit reports; forwarding of audits to state auditor; failure to file or correct deficiencies; public inspection.

(a)(1) Beginning with the local government fiscal year which ends between July 1, 1994, and June 30, 1995, the governing authority of each unit of local government having a population in excess of 1,500 persons according to the latest estimate of population by the United States Bureau of the Census or its successor agency or expenditures of $300,000.00 or more shall provide for and cause to be made an annual audit of the financial affairs and transactions of all funds and

activities of the local government for each fiscal year of the local government.

(2) The governing authority of each local unit of government not included in paragraph (1) of this subsection shall provide for and cause to be made the audit required pursuant to paragraph (1) of this subsection not less often than once every two fiscal years. Audits performed pursuant to this paragraph shall be for both fiscal years.

(3) The governing authority of each local unit of government having expenditures of less than $300,000.00 in that government's most recently ended fiscal year may elect to provide for and cause to be made, in lieu of the biennial audit otherwise required under paragraph (2) of this subsection, an annual report of agreed upon procedures for that fiscal year. The agreed upon procedures shall include as a minimum: proof and reconciliation of cash, confirmation of cash balances, a listing of bank balances by bank, a statement of cash receipts and cash disbursements, a review of compliance with state law, and a report of agreed upon procedures. This agreed upon procedures report shall be in a format prescribed by the state auditor and shall constitute an annual audit report for purposes of and within the meaning of the requirements of subsections (d) through (g) of this Code section. The Department of Community Affairs is authorized to assist requesting local governments in preparing agreed upon procedures reports required under this paragraph and in establishing record-keeping procedures needed in preparing those reports and is further authorized to charge those local governments reasonable fees for that assistance. To the extent that the state auditor is able to perform the agreed upon procedures, the governing body may contract with the state auditor.

(4) At the option of the governing authority, an audit may be made at a lesser interval than one year.

(b) The audits of each local government shall be conducted in accordance with generally accepted government auditing standards. Each audit shall also contain a statement of any agreement or arrangement under which the local unit of government has assumed any actual or potential liability for the obligations of any governmental or private agency, authority, or instrumentality. Such statement shall include the purpose of the agreement or arrangement, shall identify the agency, authority, or instrumentality upon whose obligations the unit of local government is or may become liable, and shall state the amount of actual liability and the maximum amount of potential liability of the local government under the agreement or arrangement. To the extent that the state auditor is able to provide comparable auditing services, the governing body may contract with the state auditor.

(c) All annual audit reports of local units of government shall contain at least the following:

(1) Financial statements prepared in conformity with generally accepted governmental accounting principles, setting forth the financial condition and results of operation of each fund and activity of the local government and such financial statements shall be the representation of the local government; and

(2) The opinion of the performing auditor with respect to the financial statement; in addition to an explanation of any qualification or disclaimers contained in the opinion, such opinion shall also disclose, in accordance with generally accepted government auditing standards, any apparent material violation of state or local law discovered during the audit.

(d)(1) Each annual audit report of a local unit of government shall be completed and a copy of the report forwarded to the state auditor within 180 days after the close of the unit's fiscal year. In addition to the audit report, the local unit of government shall forward to the state auditor, within 30 days after the audit report due date, written comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, the written comments should include a statement describing the reason it is not. In the case of units provided for in paragraph (2) of subsection (a) of this Code section, the audit reports for both fiscal periods shall be submitted within 180 days after the close of each second fiscal year and the written comments shall be submitted within 30 days after the audit report due date.

(2) The state auditor shall review the audit report and written comments submitted to the auditor's office to ensure that it meets the requirements for audits of local governments. If the state auditor finds the requirements for audits of local governments have not been complied with, the state auditor shall within 60 days of receipt of the audit or the written comments notify the governing authority and the auditor who performed the audit and shall submit to them a list of deficiencies to be corrected. A copy of this notification shall also be sent by the state auditor to each member of the General Assembly whose senatorial or representative district includes any part of the unit of local government.

(3) If the state auditor has not received any required audit or written comments by the date specified in paragraph (1) of this subsection, the state auditor shall within 30 days of such date notify the unit of local government that the audit has not been received as required by law. A copy of this notification shall also be sent by the state auditor to each member of the General Assembly whose senatorial or representative district includes any part of the unit of local government.

(4) The state auditor, for good cause shown by those local units in which an audit is in the process of being conducted or will promptly be conducted, may waive the requirement for completion of the audit within 180 days. Such waiver shall be for an additional period of not more than 180 days and no such waiver shall be granted for more than two successive years to the same unit of local government.

(5) No state agency shall make or transmit any state grant funds to any local government which has failed to provide all the audits required by law within the preceding five years.

(e) A copy of the report and of any comments made by the state auditor pursuant to paragraph (2) of subsection (d) of this Code section shall be maintained as a public record for public inspection during the regular working hours at the principal office of the local government. Those units of local government not having a principal office shall provide a notification to the public as to the location of and times during which the public may inspect the report.

(f) Upon a failure, refusal, or neglect to have an annual audit made, or a failure to file a copy of the annual audit report with the state auditor, or a failure to correct auditing deficiencies noted by the state auditor, the state auditor shall cause a prominent notice to be published in the legal organ of, and any other newspapers of general circulation within, the unit of local government. Such notice shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear. Such notice shall be published twice and shall state that the governing authority of the unit of local government has failed or refused, as the case may be, to file an audit report or to correct auditing deficiencies, as the case may be, for the fiscal year or years in question. Such notice shall further state that such failure or refusal is in violation of state law.

(g) The state auditor may waive the requirement of correction of auditing deficiencies for a period of one year from the required audit filing date, provided evidence is presented that substantial progress is being made towards removing the cause of the need for the waiver. No such waiver for the same set of deficiencies shall be granted for more than two successive years to the same local government. (Ga. L. 1980, p. 1738, § 8; Ga. L. 1984, p. 818, §§ 3, 4; Ga. L. 1987, p. 349, § 1; Ga. L. 1993, p. 717, § 1; Ga. L. 1994, p. 1083, §§ 2-6; Ga. L. 1995, p. 10, § 36; Ga. L. 2004, p. 585, § 2.)

Cross references. — Audits of counties and municipalities, § 36-60-8. Fiscal year for state and units of state government, § 45-6-2. State auditor generally, T. 50, C. 6.

Editor's notes. — Ga. L. 1994, p. 1083, § 6, not codified by the General Assembly until 1995, provides: "No state agency shall make or transmit any state grant funds to any local government which has failed to provide all the audits required by law within the preceding five years."

36-81-8. Annual local government finances reports and local independent authority indebtedness reports; assistance by Department of Community Affairs; community indicators report.

(a) As used in this Code section, the term "local independent authority" means each local public body corporate and politic created in and for a county, municipality, consolidated government, or combination thereof, which is authorized to issue bonds under the Constitution and laws of this state.

(b)(1)(A) Each unit of local government shall submit an annual report of local government finances to the Department of Community Affairs. The report shall include the revenues, expenditures, assets, and debts of all funds and agencies of the local government, and other such information as may be reasonably requested by the department.

(B) Each unit of local government which levies a tax pursuant to Article 3 of Chapter 13 of Title 48 shall also submit a schedule of all revenues therefrom which are expended for the promotion of tourism, conventions, and trade shows or any other tourism related purpose which is specified under Code Section 48-13-51. Such schedule shall identify both the project or projects involved and the contracted entity involved in each such expenditure.

(2) Each local independent authority shall submit an annual report of indebtedness to the Department of Community Affairs. Such report shall include the revenues, expenditures, assets, and debts of all funds of the local independent authority and shall describe any actions taken by such local independent authority to incur indebtedness.

(3) The local government finances report and the local independent authority indebtedness report shall be filed on forms promulgated by the department and shall be submitted within the requested time periods established by the department.

(c) The department shall have the authority to require local governments and local independent authorities to submit the reports as provided for in subsection (b) of this Code section as a condition of such local government or local independent authority receiving state appropriated funds from the department. Upon the receipt of the report of local government finance from a local government or the report of local independent authority debt from a local independent authority, the department is authorized to release any state appropriated grant funds that may be due at such time to the local government or the local independent authority.

(d) The department's implementation of subsections (b) and (c) of this Code section shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and the department is specifically directed to promulgate the forms provided for in subsection (b) of this Code section in the manner provided for promulgation of rules under Chapter 13 of Title 50.

(e) Utilizing information contained in audit reports of local governments filed with the state auditor, the report of county or municipal finances filed with the Department of Community Affairs, and other available state or federal information of public record, the Department of Community Affairs shall prepare annually a report on local government finances. Utilizing information contained in reports of indebtedness returned to the Department of Community Affairs, the Department of Community Affairs shall prepare annually a report on indebtedness of local independent authorities. The local government finances report shall be filed on January 15 of each year, beginning January 15, 1985, and the local independent authority indebtedness report shall be filed on January 15 of each year, beginning January 1, 1990, with the Governor, the Speaker of the House of Representatives, the President of the Senate, the chairman of the House Ways and Means Committee, the chairman of the House State Planning and Community Affairs Committee, the chairman of the Senate Finance Committee, and the chairman of the Senate State and Local Governmental Operations Committee, as well as with the chief elected official or chief appointed official of each local unit of government and each local independent authority and member of the General Assembly upon request.

(f) The local government finances report and the local independent authority indebtedness report shall be organized, within the limits of available resources, in such a manner as to allow for reasonable comparative analysis of local government revenues and expenditures and for reasonable comparative analysis of local independent authority debt.

(g) The department, in addition to its other duties, shall assist local units of government and local independent authorities in fulfilling the requirements of this article. The department shall coordinate its technical assistance efforts with the state auditor, the University System of Georgia, the Association County Commissioners of Georgia, the Georgia Municipal Association, and the Georgia Society of Certified Public Accountants and should coordinate with any other organizations interested and currently active in local government financial management so as to ensure that coordination of training and assistance is maintained. The department may contract or subcontract with other public or private agencies to provide assistance to local units of government or local independent authorities.

(h) The department, either in conjunction with the local government finances report or separately, shall prepare a community indicators report for each local unit of government having annual expenditures of $250,000.00 or more as indicated pursuant to the most recent Report of Local Government Finances. The community indicators report shall include data on local government services, administration, and community characteristics. The department shall have the authority to require local governments to submit reports on local government services and operations as a condition of such local government receiving state appropriated funds from the department. Such reports shall be obtained utilizing the local government finance survey as provided in subsection (b) of this Code section and the local government operations survey collected by the department. The department shall develop the community indicators report in cooperation with the Association County Commissioners of Georgia and the Georgia Municipal Association and shall prepare the report on or before December 31, 1998, and annually thereafter. (Ga. L. 1980, p. 1738, § 9; Ga. L. 1982, p. 3, § 36; Ga. L. 1984, p. 818, §§ 5, 6; Ga. L. 1986, p. 10, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 1393, § 1; Ga. L. 1989, p. 908, § 1; Ga. L. 1992, p. 6, § 36; Ga. L. 1995, p. 10, § 36; Ga. L. 1997, p. 1575, § 3; Ga. L. 2004, p. 403, § 4; Ga. L. 2009, p. 303, § 11/HB 117.)

Cross references. — Powers and duties of Department of Community Affairs generally, §§ 50-8-2, 50-8-3.

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

Administrative rules and regulations. — Report of local government finances, Official Compilation of the Rules and Regulations of the State of Georgia, Office of Coordinated Planning, Georgia Department of Community Affairs, Chapter 110-3-1.

Grants of the OneGeorgia Authority, Official Compilations of the Rules and Regulations of the State of Georgia, Title 413.

36-81-8.1. Definitions; grant certification forms; filing with state auditor; forfeiture of funds for noncompliance; no exemption from liability.

(a) As used in this Code section, the term:

(1) "Subrecipient" means an entity that receives a grant of state funds from the Governor's emergency fund or from a special project appropriation through a local government and shall also mean an entity which in turn receives all or any portion of such grant funds from a subrecipient.

(2) "Unit of local government" means, for purposes of this Code section and notwithstanding paragraph (16) of Code Section 36-81-2, a:

(A) Municipality, county, consolidated government, county school district, independent school district, other political subdivision of the state, any public agency or authority of any of the foregoing, or any combination of any of the foregoing;

(B) Regional commission;

(C) Public authority created by local Act or local constitutional amendment of the General Assembly; or

(D) Public authority created by general law which applies to an area of less than the entire state and which requires activation by a county or municipal government.

(b) Each grant of state funds to a recipient unit of local government from the Governor's emergency fund or from a special project appropriation in an amount greater than $5,000.00 shall be conditioned upon the receipt by the state auditor of a properly completed grant certification form. The form shall be designed by the state auditor and shall be distributed with each covered grant as required by this Code section. The grant certification form shall require the certification by the recipient unit of local government and by the unit of local government auditor that the grant funds were used solely for the express purpose or purposes for which the grant was made. Such form shall be filed with the state auditor in conjunction with the annual audit required under Code Section 36-81-7 or 50-6-6 or any other applicable Code section for each year in which such grant funds are expended or remain unexpended by the unit of local government. A recipient unit of local government which is not otherwise subject to the annual audit requirements specified in this subsection shall file a grant certification form with the state auditor no later than December 31 of each year in which such grant funds are expended or remain unexpended. For grant funds to subrecipients, the certification by the unit of local government auditor required by this subsection may also be made by an in-house or internal auditor of the unit of local government who meets the education requirements contained in subparagraph (a)(3)(A) of Code Section 43-3-6. The cost of performing any audit required by this subsection or paragraph (1) of subsection (d) of this Code section shall be an eligible expense of the grant. However, the amount charged shall not exceed 2 percent of the amount of the grant or $250.00 per required audit, whichever is less. The unit of local government to whom the grant is made may deduct the cost of any such audit from the funds disbursed to the subrecipient.

(c) Where the grant of state funds is for $5,000.00 or less, the grant shall require submission to the state auditor of a properly completed

grant certification form as required by subsection (b) of this Code section except that only the unit of local government need certify that the grant funds were used solely for the express purpose or purposes for which the grant was made. However, where such grant is to a subrecipient, the grant shall require submission to the unit of local government of a notarized affidavit executed by the executive director, president, chairperson, chief executive officer, or other responsible party representing the subrecipient, by whatever name or title, to whom the grant funds are disbursed. The affidavit shall certify under oath that the funds were used solely for the express purpose or purposes for which the grant was made. Such affidavit shall be submitted annually for each year that grant funds are expended or remain unexpended according to a schedule established by the unit of local government and shall be made on a form designed by the state auditor and distributed with each covered grant as required by this Code section.

(d)(1) Notwithstanding subsection (b) or (c) of this Code section, the Governor, the Appropriations Committee of the House of Representatives, or the Appropriations Committee of the Senate shall have the right and authority to direct and require any recipient unit of local government to obtain or perform an audit of any grant of state funds from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(2) Notwithstanding subsection (b) or (c) of this Code section, a recipient unit of local government shall have the right or authority to obtain or perform an audit of any grant of state funds to a subrecipient from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(e) The failure to comply with the requirements of this Code section shall result in a forfeiture of a state grant and the return to the state of any such grant funds which have been received by the unit of local government. In the case of a state grant awarded to a subrecipient, the subrecipient shall be responsible for the return to the state of any such grant funds if it is determined that the funds were not used for the express purpose or purposes for which the grant was made. A grant recipient or subrecipient shall be ineligible to receive funds from the Governor's emergency fund or from a special project appropriation until all unallowed expenditures are returned to the state, except that a recipient unit of local government shall not be ineligible for such funds where a subrecipient has not used funds it received for the express purpose or purposes for which the grant was made.

(f) No subrecipient shall be considered an agent of the unit of local government or be indemnified or held harmless by the unit of local government for any negligence, misfeasance, or malfeasance of the

subrecipient, and a recipient unit of local government shall not be liable for any expenditure of state grant funds by a subrecipient. (Code 1981, § 36-81-8.1, enacted by Ga. L. 1998, p. 1611, § 5; Ga. L. 2003, p. 811, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2006, p. 718, § 1/SB 202; Ga. L. 2008, p. 181, § 16/HB 1216.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "Governor's" was substituted for "governor's" in the first sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 2006, "Public" was substituted for "Any public" at the beginning of subparagraphs (a)(2)(C) and (a)(2)(D), and "Code Section 36-81-7 or 50-6-6" was substituted for "Code Sections 36-81-7, 50-6-6," in the fourth sentence of subsection (b).

36-81-9. Effect of article on other laws generally.

This article shall not be construed to repeal or conflict with any law providing budgetary, fiscal, or auditing procedures more restrictive than those in this article. (Ga. L. 1980, p. 1738, § 10; Ga. L. 1987, p. 3, § 36.)

JUDICIAL DECISIONS

O.C.G.A. Art. 1, Ch. 81, T. 36 did not repeal by implication a 1961 local law requiring a county board of commissioners to publish "a monthly report or statement in detail of the expenses and disbursements of the funds" of the county and to publish a full statement of the amount of money that was owed by the county and to whom. Eley v. Greene County Bd. of Comm'rs, 258 Ga. 562, 372 S.E.2d 231 (1988).

36-81-10. Effect of article on right to make expenditures and raise revenues; effect on home rule powers.

This article shall not be construed so as to prohibit local governments from making authorized expenditures for any lawful purpose or from raising revenues in any manner otherwise authorized by law. It is the specific intent of the General Assembly in adopting this article that local units of government shall continue to have and to exercise their home rule powers as provided by law. (Ga. L. 1980, p. 1738, § 2; Ga. L. 1987, p. 3, § 36.)

36-81-11. Budget for implementing security plans subject to approval by the governing authority.

The development and implementation of a security plan and all related technology pursuant to paragraph (10) of subsection (a) of Code Section 15-16-10 shall be subject to the annual budget approved for the office of the sheriff by the governing authority. (Code 1981, § 36-81-11, enacted by Ga. L. 2006, p. 560, § 3/SB 462.)

Cross references. — Duties of sheriff in implementing security plan, § 15-16-10.

ARTICLE 2

AUDITS AS CONDITION FOR RECEIPT OF STATE ASSISTANCE

36-81-20. Audits accepted by state; additional audits; section not to limit state's audit authority.

(a) Whenever a state agency or a state department requires a unit of local government to perform an audit or whenever a state agency or a state department would perform an audit of a unit of local government as a condition for such unit of local government having received a grant of state money or services, the state agency or state department shall, except as provided in subsections (b) and (c) of this Code section, accept any audit which meets the requirements of the federal Single Audit Act of 1984 if such audit includes those moneys or services granted by the state and includes the reporting requirements of any applicable state law or of any state agency.

(b) Notwithstanding subsection (a) of this Code section, a state agency shall be authorized to conduct any additional audits necessary to carry out its duties and responsibilities as set forth in state law or regulation, and nothing in this Code section shall authorize any local government or unit or agency thereof to constrain in any manner any such state agency from performing any such additional audit.

(c) This Code section shall not limit the authority of state agencies to conduct audits and evaluations of state financial assistance programs or to enter into contracts for the conduct of such audits and evaluations and shall not limit the authority of the state auditor or any state audit official. (Code 1981, § 36-81-20, enacted by Ga. L. 1986, p. 758, § 1.)

U.S. Code. — The federal Single Audit Act of 1984, referred to in subsection (a), is codified at 31 U.S.C. § 7501 et seq.

CHAPTER 82

BONDS

Article 1

General Provisions

Sec.

36-82-1. Election for bonded debt; date of election in unincorporated areas of certain counties; right to sell bonds at discount; advertisements as binding statements of intention; use of surpluses; meetings open to public; refunding.

36-82-2. Voting in election for bonded debt; returns and declaration of election result.

36-82-3. Issuance of bonds upon favorable election vote; ordinance or resolution authorizing refunding bonds; issuance, content, and form of refunding bonds.

36-82-4. Action for collection of bonds by holders.

36-82-4.1. Advertisement of bond elections in counties having population of 400,000 to 500,000; use of bond funds.

36-82-4.2. Expenditure of bond funds for purposes other than stated in public bond notice.

36-82-5. Destruction of unsold bonds.

36-82-6. Notice, hearing, order of court, and affidavit of two disinterested witnesses as to destruction of bonds; compensation of witnesses; payment of costs of proceedings.

36-82-7. Authorized investments for bond proceeds.

36-82-7.1. Assessment and collection of tax to pay refunding bonds.

36-82-8. Deduction of sinking fund in computing bonded indebtedness.

36-82-9. Certification requirement for pension obligation bonds; requirement for reserve fund.

Sec.

36-82-10. Reporting requirements.

Article 2

Validation of Bonds

Part 1

General Provisions

36-82-20. Notice to district attorney or Attorney General of election or resolution favoring issuance of bonds or refunding bonds.

36-82-21. Petition to superior court to show cause; service of petition and order; answers.

36-82-22. Notice of superior court hearing on show cause order.

36-82-23. Hearing and judgment on show cause order; parties to proceedings; appeal.

36-82-24. Effect of judgment of validation.

36-82-25. Entry of reference to judgment of validation on bonds; use of entry as evidence.

36-82-26. Payment of costs of judicial validation proceedings.

36-82-27. Procedure upon failure of district attorney or Attorney General to file petition with superior court generally.

36-82-28. Effect of judgment of validation upon failure to file petition.

Part 2

Validation by Holder of Bonds Issued by Counties or Municipalities Subsequent to Adoption of Constitution of 1877

36-82-40. Authorization and procedure generally.

36-82-41. Furnishing of indemnity bond by holder.

36-82-42. Petition by holder to district

Sec.
attorney or Attorney General.
36-82-43. Petition by district attorney or Attorney General to superior court; order to show cause; service of petition and order; answer.
36-82-44. Hearing and judgment; parties to proceedings; appeal.
36-82-45. Effect of judgment of validation.
36-82-46. Applicability of Code Sections 36-82-22 and 36-82-25.
36-82-47. Payment of costs of proceedings.

Article 3

Revenue Bonds

36-82-60. Short title.
36-82-61. Definitions.
36-82-62. Powers as to undertakings and revenue bonds generally.
36-82-63. Adoption of resolution authorizing undertaking and issuance of revenue bonds.
36-82-64. Issuance of revenue bonds generally; form; terms; signatures; interim receipts; negotiability; nontaxability.
36-82-65. Covenants in resolution authorizing issuance of bonds; article and resolution as enforceable contract with bondholders.
36-82-66. Governmental liability for payment of bonds; recitation on bond.
36-82-67. Right of bondholder or trustee to apply for receivership upon default in payment on bond; procedure for appointment.
36-82-68. Powers and duties of receiver generally.
36-82-69. Limitations on authority of receiver and supervising court.
36-82-70. Supervision of receiver by court.

Sec.
36-82-71. Surrender of receivership upon cure of default.
36-82-72. Construction of Code Sections 36-82-67 through 36-82-71 and this Code section.
36-82-73. Proceedings for validation of revenue bonds generally.
36-82-74. Notice to district attorney or Attorney General of resolution authorizing revenue bonds.
36-82-75. Duty of district attorney or Attorney General to file petition; order to show cause; service of petition and order; answer.
36-82-76. Notice of hearing on validation.
36-82-77. Hearing and judgment on validation; parties to proceedings; right of appeal; review of valuation of existing undertakings.
36-82-78. Effect of judgment of validation.
36-82-79. Entry of reference to judgment on validated bonds; use of entry as evidence; clerk's fee.
36-82-80. Payment of costs of proceedings.
36-82-81. Procedure when district attorney or Attorney General fails to file petition.
36-82-82. Effect of judgment of validation upon failure to file petition.
36-82-83. Validation of revenue bonds of certain hospital authorities.
36-82-84. Applicability of article to common carriers of passengers for hire.
36-82-85. Construction of article generally; applicability of certain other provisions of law.

Article 4

Bonds

36-82-100. Expenditure of bond proceeds; auditing.

Article 5

Regulation of Interest Rates for Bonds and Obligations Other Than General Obligation Bonds

Sec.

36-82-120. Purpose of article.
36-82-121. Definitions.
36-82-122. Exemption of bonds from Constitution and laws of Georgia regulating interest rates; fixing of rates of interest by resolution or ordinance.
36-82-123. Repeal of regulations as to interest rates contained in other laws.
36-82-124. Construction of article.

Article 6

Form and Services Connected with Creation of Repayment Obligations

36-82-140. Use of facsimile signatures and seals; contracts with financial institutions to perform certain repayment functions; evidence of repayment obligations.
36-82-141. Records of ownership, registration, transfer, and exchange of repayment obligations not public records.
36-82-142. Construction of article.

Article 7

Regulation of Bonds and Obligations Issued by Development Authorities

36-82-160. Requirements for filing; forms; exemptions [Repealed].

Article 8

Georgia Allocation System

Sec.

36-82-180. Short title.
36-82-181. Legislative purpose.
36-82-182. Definitions.
36-82-183. Powers of department.
36-82-184. Determination of state ceiling; records required.
36-82-185. Application for notice of allocation; receipt of application; issue of notice; confirmation of bond issue; certificates under Federal Code.
36-82-186. Economic development share.
36-82-187. Application for economic development share and competitive pool allocation; priority of and approval of application; carrying over; time and amount limitation.
36-82-188. Employment test.
36-82-189. Housing share.
36-82-190. Reservations from housing share.
36-82-191. Applications for single-family bond projects; issue of notice; confirmation; exploration.
36-82-191.1. Allocation of housing share; expiration date of notice of allocation; state and urban housing share set-aside exempt from subparagraphs (b)(3)(A) through (b)(3)(C) [Repealed].
36-82-192. Requirements for applications for qualified residential rental projects; periods for notices of allocation; expiration dates for notices; confirmation of issuance required.
36-82-192.1. Application for single-family project; notice of allocation; waiver of provisions by commissioner [Repealed].
36-82-193. Flexible share for 1990.
36-82-194. Application for flexible pool allocation; issue of notice; confirmation; expiration.
36-82-195. Policy guidelines for making allocations.
36-82-196. Factors to consider in applying policy guidelines.
36-82-197. Transfer of fund from economic development share or applicable reservation component of housing share to the flexible share.
36-82-198. Flexible share carryforward funds.
36-82-199. Carryforward applications.
36-82-200. Mortgage credit certificate carryforward election.

Sec.
36-82-201. State ceiling deemed allocated and assigned.
36-82-202. Applicability.

Article 9

Trusts

36-82-220. Definitions.
36-82-221. Sponsoring governmental unit requirement.
36-82-222. Construction.

Article 10

Commercial Paper Notes from Government

36-82-240. Definitions.
36-82-241. Governed by general provisions on commercial paper; issuance of security by governmental entity; requirements of governing body renewal and reissuance of commercial paper.

Article 11

Interest Rate Management Agreements

Sec.
36-82-250. Definitions.
36-82-251. Qualified interest rate management agreements authorized.
36-82-252. Plan required; annual review of plan and report.
36-82-253. Requirements for plans; renewal or termination; provisions and limitations regarding obligation for payment; credit enhancement and liquidity agreements.
36-82-254. Required information in annual financial statements.
36-82-255. Applicability of Georgia law; jurisdiction.
36-82-256. Applicability to prior contracts.

Cross references. — Revenue obligations generally, Ga. Const. 1983, Art. IX, Sec. VI. Issuance of bonds for purposes of building, equipping, or purchasing sites for school buildings, § 20-2-430 et seq.

RESEARCH REFERENCES

ALR. — What included in term "bonds" in will, 35 ALR2d 1095.

ARTICLE 1

GENERAL PROVISIONS

JUDICIAL DECISIONS

Article is enabling Act. — Since Ga. Const. 1976, Art. IX, Sec. VII, Para. I (see Ga. Const. 1983, Art. IX, Sec. V, Para. I), concerning the incurring of debts by a municipality, is not self-executing, the General Assembly passed an enabling Act (this article), putting this provision into operation. McKnight v. City of Decatur, 200 Ga. 611, 37 S.E.2d 915 (1946).

It seems manifest that county board of education is proper authority contemplated under provisions of this article to call, manage, consolidate, and declare the result of an election held for the purpose of incurring bonded indebtedness for building and equipping schoolhouses. Nelms v. Stephens County Sch. Dist., 201 Ga. 274, 39 S.E.2d 651 (1946) (decided prior to enactment of "Georgia Election Code," Ch. 3, T. 21; see O.C.G.A. Art. 1, Ch. 82, T. 36).

Cited in Posey v. Dooly County Sch.

Dist., 215 Ga. 712, 113 S.E.2d 120 (1960); Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456 (1968).

OPINIONS OF THE ATTORNEY GENERAL

School bond election called by county board of education may be held concurrently with general election. 1965 Op. Att'y Gen. No. 65-9.

RESEARCH REFERENCES

ALR. — Validity, within authorized debt, tax, or voted limit, of bond issue in excess of amount permitted by law, 175 ALR 823.

36-82-1. Election for bonded debt; date of election in unincorporated areas of certain counties; right to sell bonds at discount; advertisements as binding statements of intention; use of surpluses; meetings open to public; refunding.

(a) When any county, municipal corporation, or political subdivision desires to incur any bonded debt, as permitted by the Constitution of Georgia, the election required shall be called and held in accordance with this Code section and Code Sections 36-82-2 through 36-82-4.

(b) The officers charged with levying taxes, contracting debts, and the like for the county, municipal corporation, or political subdivision shall give notice for not less than 30 days immediately preceding the day of the election in the newspaper in which sheriff's advertisements for the county are published, notifying the qualified voters that on the day named an election will be held to determine the question of whether bonds shall be issued by the county, municipal corporation, or political subdivision. The notice shall specify the principal amount of the bonds to be issued, the purpose for which the bonds are issued, the interest rate or rates which such bonds are to bear, and the amount of principal to be paid in each year during the life of the bonds. The notice, in the discretion of the issuing body, in lieu of specifying the rate or rates of interest which the bonds are to bear, may state that the bonds, when issued, will bear interest at a rate not exceeding a maximum per annum rate of interest specified in the election notice or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the election notice.

(b.1) In all counties of this state having a population of 800,000 or more according to the United States decennial census of 2000 or any future such census, no county-wide bond election or school bond election in the unincorporated area of any such county shall be held on any date other than the date of the November general election; provided,

however, that upon a determination by any superior court of competent jurisdiction that the holding of such election on the date of the November general election would cause irreparable harm to the electors of any such county, such election shall be held in the manner provided for in subsection (b) of this Code section.

(c) Nothing contained in this Code section shall be construed as prohibiting or restricting the right of the issuing body to sell bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in the election notice.

(d) Every legal advertisement of a bond election shall contain a reference that any brochures, listings, or other advertisements issued by the governing body of any county, municipality, or other political subdivision of this state or by any other person, firm, corporation, or association with the knowledge and consent of the governing body of such county, municipality, or other political subdivision of this state shall be deemed to be a statement of intention of the governing body of such county, municipality, or other political subdivision of this state concerning the use of the bond funds; and such statement of intention shall be binding on the governing body of such county, municipality, or other political subdivision of this state in the expenditure of any such bond funds or interest received from such bond funds which have been invested, unless the governing body of such county, municipality, or other political subdivision of this state uses such bond funds for the retirement of bonded indebtedness, in the manner provided for in this Code section; and such statement of intention shall be set forth in the resolution pursuant to which such bonds are issued. Bond funds and interest received from such bond funds which have been invested shall be expended in the manner in which advertised and for the purpose stated in such statement of intention. The governing body of such county, municipality, or other political subdivision of this state may, by a two-thirds' vote, declare any project which has been established pursuant to any such statement of intention to be unnecessary. In that event, the governing body of such county, municipality, or other political subdivision of this state shall use such bond funds for the payment of all or any part of the principal and interest on any bonded indebtedness of such county, municipality, or other political subdivision of this state then outstanding. Surpluses from the overestimated projects, including interest received on bond funds of such projects, shall be used first to complete underestimated projects and all remaining funds received from interest and overestimated projects shall be used for other projects or improvements which the governing body of such county, municipality, or other political subdivision of this state may deem necessary and which are encompassed within the language of the statement of purpose in the election notice. Any meetings of any governing bodies at

which any bond fund allocation is made shall be open to the public. Such meetings shall be announced to the news media in advance and shall be open to the news media.

(e)(1) It is expressly provided that any county, municipality, or other political subdivision of this state may provide for the refunding of all or any part of the outstanding bonded indebtedness of such county, municipality, or political subdivision without the necessity of a referendum therefor if the governing authority of such county, municipality, or political subdivision adopts a resolution or ordinance authorizing the issuance of general obligation refunding bonds for such purpose, provided the following conditions are met:

(A) The term of the refunding bonds shall not extend beyond the final maturity date of the bonds being refunded;

(B) The rate of interest borne by the refunding bonds shall not exceed the rate of interest borne by the bonds being refunded;

(C) The principal amount of the refunding bonds may only exceed the principal amount of the bonds being refunded to the extent necessary to effectuate a refund and to allow the reduction of the total principal and interest requirements over the remaining term of the bonds being refunded; and

(D) The proceeds derived from the sale of the refunding bonds, together with the earnings and increments derived therefrom, if any, will be sufficient to provide for the payment of the principal of, interest, and premium, if any, on the bonds being refunded and shall be deposited in an irrevocable trust fund created for that purpose.

(2) Such refunding bonds so authorized to be issued in compliance with the conditions set forth above, when issued, shall be construed and deemed to be issued in lieu of such original debt being so refunded, and the original debt upon the creation of the irrevocable trust fund and the deposit of the requisite proceeds shall not constitute a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia, but the refunding bonds shall constitute a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia and shall count against the limitation on debt measured by the 10 percent of assessed value of taxable property as expressed therein.

(f) Any person who violates this Code section shall be guilty of a misdemeanor; provided, however, nothing contained in this Code section shall be construed so that a violation thereof shall affect the validity of any bonds issued under this Code section. (Ga. L. 1878-79, p. 40, § 1; Code 1882, § 508i; Civil Code 1895, § 377; Civil Code 1910,

§ 440; Code 1933, § 87-201; Ga. L. 1960, p. 1032, § 1; Ga. L. 1968, p. 1007, § 1; Ga. L. 1976, p. 1091, § 1; Ga. L. 1981, p. 1581, § 1; Ga. L. 1982, p. 2107, § 43; Ga. L. 1984, p. 22, § 36; Ga. L. 1984, p. 1362, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 886, § 1; Ga. L. 1992, p. 2052, § 1; Ga. L. 1995, p. 355, § 1; Ga. L. 2002, p. 1473, § 1.)

Cross references. — Further provisions regarding authorization of bonded debt, § 21-2-45.1.

Editor's notes. — Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provided: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

Law reviews. — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Analysis

General Consideration
Sufficiency of Notice
Special and General Laws

General Consideration

Section must be strictly complied with. — In order to render election legal, provisions of this section must be strictly complied with. Bowen v. Mayor of Greenesboro, 79 Ga. 709, 4 S.E. 159 (1887); Mayor of Athens v. Hemerick, 89 Ga. 674, 16 S.E. 72 (1892); Ponder v. Mayor of Forsyth, 96 Ga. 572, 23 S.E. 498 (1895); Smith v. Mayor of Dublin, 113 Ga. 833, 39 S.E. 327 (1901); Berrien County v. Paulk, 150 Ga. 829, 105 S.E. 491 (1920); Allen v. City of Atlanta, 166 Ga. 28, 142 S.E. 262 (1928) (see O.C.G.A. § 36-82-1).

Election not invalid because of disregard of directory provisions. — Bond election should not be declared invalid on account of a disregard of merely directory provisions of election laws when such would not render an election for municipal officers invalid. Brumby v. City of Marietta, 132 Ga. 408, 64 S.E. 321 (1909).

Section 9-13-141 does not affect this section. — Former Civil Code 1895, § 5458 (see O.C.G.A. § 9-13-141), relating to the publication of notices of sales and orders by certain public officers and others, did not repeal or modify that portion of former Civil Code 1895, § 377 (see O.C.G.A. § 36-82-1), which required that notice of an election called for the purpose of determining whether bonds shall be issued by a county shall be published for a space of 30 days next preceding the day of the election. Davis v. Dougherty County, 116 Ga. 491, 42 S.E. 764 (1902).

Denial by election to issue school bonds does not impair right of taxation. Ayers v. McCalla, 95 Ga. 555, 22 S.E. 295 (1895).

County has no authority to enter into executory contract. — There is no authority of law for a county to enter into an executory contract for the sale of bonds which, at the time of the contract, the county is not authorized to issue. For a breach of such an undertaking an action for damages will not lie against the county. Robinson-Humphrey Co. v. Wilcox County, 129 Ga. 104, 58 S.E. 644 (1907).

No authority to call election when work lawfully begun. Hogan v. State, 133 Ga. 875, 67 S.E. 268 (1910).

When statute has not been complied with, the issuance of bonds may be restrained by injunction. Bowen v. Mayor

of Greenesboro, 79 Ga. 709, 4 S.E. 159 (1887); Mayor of Athens v. Hemerick, 89 Ga. 674, 16 S.E. 72 (1892); Mayor of Perry v. Norwood, 99 Ga. 300, 25 S.E. 648 (1896).

Unnecessary to publish authority of mayor to call election. — It is not necessary to publish the ordinance, or resolution, by which the mayor was authorized to order an election to be held upon the question whether or not such bonds should be issued, provided the notice required by law was duly published. Heilbron v. Mayor of Cuthbert, 96 Ga. 312, 23 S.E. 206 (1895).

No authority to issue bonds for past indebtedness. Mayor of Macon v. Jones, 122 Ga. 455, 50 S.E. 340 (1905).

When separate submissions required. — If it can be said that the proposed improvements are not naturally related or connected, then it is clear that separate submissions are required; if, on the other hand, the several parts of the project are plainly so related that, united, the parts form but one rounded whole, it is equally clear that the parts may be grouped together and submitted as one proposition. Miles v. State, 96 Ga. App. 610, 101 S.E.2d 173 (1957).

Issue of bonds in installments. — Nothing in the Constitution or this section is inconsistent with authorization of an issue of bonds in installments and the levy of the tax for the payment of each installment in the year of the bond's issue. Brady v. City of Atlanta, 17 F.2d 764 (5th Cir. 1927) (see O.C.G.A. § 36-82-1).

Cited in Houston v. Thomas, 168 Ga. 67, 146 S.E. 908 (1929); Gibbs v. Ty Ty Consol. Sch. Dist., 168 Ga. 379, 147 S.E. 764 (1929); Lumpkin v. State, 73 Ga. App. 229, 36 S.E.2d 123 (1945); Hattrich v. State, 116 Ga. App. 281, 156 S.E.2d 925 (1967); Luther v. DeKalb County, 229 Ga. 18, 189 S.E.2d 387 (1972).

Sufficiency of Notice

Requirements as to notice mandatory. — Law requiring notice to be given in a certain way is mandatory, and a failure to comply with the law vitiates the election, if objection is raised at the proper time and in the proper way. Irvin v. Gregory, 86 Ga. 605, 13 S.E. 120 (1891); Davis v. Dougherty County, 116 Ga. 491, 42 S.E. 764 (1902).

Failure to use explicit language treated as irregularity. — Though the notice of the election provided for by an Act may not be in the clearest and most unequivocal terms, when the terms of the notice were such as to show that the question was necessarily to be passed upon in the election, the failure to use more explicit language in this respect (the notice as to all other matters being sufficient) will, after the election has taken place and after the bonds, in pursuance of its result, have been issued and sold and the bonds' proceeds applied as required by the Act, be treated as a mere irregularity not invalidating the bonds, and one of which it is too late for a taxpayer who participated in the election and who had knowledge of all the facts to complain. Brand v. Town of Lawrenceville, 104 Ga. 486, 30 S.E. 954 (1898).

Inadvertently omitting last publication treated as mere irregularity. — When the advertisement prescribed was published once a week for four weeks, and the last publication was inadvertently omitted but the other three were duly made, the omission may be treated as a mere irregularity, if more than two-thirds of the qualified voters actually voted, and if the result has been acquiesced in until after action has been taken on the faith thereof by which substantial rights have arisen. Irvin v. Gregory, 86 Ga. 605, 13 S.E. 120 (1891).

Ordinance not meeting requirements of this section void. — If notice be given under an ordinance prescribing the items of the notice and the ordinance does not meet the requirements set forth in this section, both the ordinance and the notice are void and of no effect. Wilkins v. City of Waynesboro, 116 Ga. 359, 42 S.E. 767 (1902); Shinall v. City of Cartersville, 144 Ga. 219, 87 S.E. 290 (1915); Scott Sch. Dist. v. Carter, 28 Ga. App. 412, 111 S.E. 216, cert. denied, 28 Ga. App. 819 (1922) (see O.C.G.A. § 36-82-1).

Amount of bonds to be issued and for what purpose. — Notice which provides that a given amount should be used for the purpose of building a school, and another amount for the improvement of

Sufficiency of Notice (Cont'd)

the water plant, and the surplus, if any, to be used by the mayor and council in such a manner as the mayor and council might see fit, does not meet the legal requirements of a notice which shall specify "what amount of bonds are to be issued, and for what purpose." Smith v. Mayor of Dublin, 113 Ga. 833, 39 S.E. 327 (1901).

Need to state amount of debt to be incurred. — Even if no legislation is necessary to authorize a municipal corporation to hold an election to determine whether a debt other than a bonded indebtedness shall be incurred, an election held pursuant to an ordinance and notice which does not state the amount of the debt to be incurred will not be sufficient to authorize the execution of a contract incurring an indebtedness. City Council v. Dawson Waterworks Co., 106 Ga. 696, 32 S.E. 907 (1899).

Degree of specificity of bond purpose. — When the order and notice of election stated that the proceeds were used in improving and constructing the public roads on a certain county naming the roads to be improved and the order in which the roads were to be worked, such statement is sufficient under this section requiring that the purpose for which the bonds were to be issued should be stated. Moody v. Board of Comm'rs, 29 Ga. App. 21, 113 S.E. 103 (1922) (see O.C.G.A. § 36-82-1).

Notice of bond election was not subject to the criticism that the notice indicated that the bonds were to be voted for the purpose of providing funds for two or more distinct purposes, when the purposes stated were all related to providing additions and improvements to school facilities in the county. Miles v. State, 96 Ga. App. 610, 101 S.E.2d 173 (1957).

Publication in paper used by sheriff. — Notice of election for issuance of bonds must be in paper in which sheriff publishes the sheriff's advertisements. Coffee v. Ragsdale, 112 Ga. 705, 37 S.E. 968 (1901); Scott Sch. Dist. v. Carter, 28 Ga. App. 412, 111 S.E. 216, cert. denied, 28 Ga. App. 819 (1922).

Requirement of publication for 30 days. — If the publication was made only twice, on January 21 and February 4, and the election was held on February 5, this was not a compliance with the requirements of the law. Bowen v. Mayor of Greenesboro, 79 Ga. 709, 4 S.E. 159 (1887).

When it appeared that an election was held on Saturday, January 23, and that notice thereof had been published in the proper newspaper once a week for six weeks, beginning on Friday, December 18, and ending on Friday, January 22, since the notice was inserted the first time at least 30 days before the date of the election and as nearly that precise number of days immediately preceding such date as was possible under the circumstances, the fact that the publication began more than 30 days prior to such date was immaterial and afforded taxpayers no cause for attacking the validity of the notice. Clark v. Union Sch. Dist., 36 Ga. App. 80, 135 S.E. 318 (1926).

Publication of Act does not comply with requirements as to notice. — Fact that a local Act was published before the day of the election, and that the notice prescribed the amount of the bonds, the interest thereon, and when the bonds were to be paid off, was not a sufficient compliance with this section; nor was the fact that, out of 189 voters, only 17 voted against the measure, a sufficient answer to the illegality of the notice. Bowen v. Mayor of Greenesboro, 79 Ga. 709, 4 S.E. 159 (1887) (see O.C.G.A. § 36-82-1).

Notice affecting custodian of funds. — Bank as custodian of the proceeds of county bonds is chargeable with the notice given under this section as to the purpose of the bond issue and must not permit the funds to be used for other purposes. Bank of Chatsworth v. Hagedorn Constr. Co., 162 Ga. 488, 134 S.E. 310 (1926) (see O.C.G.A. § 36-82-1).

Ordinance not meeting requirements of this section void. Allen v. City of Atlanta, 166 Ga. 28, 142 S.E. 262 (1928) (see O.C.G.A. § 36-82-1).

Reduction of amount before validation. — When the election was regular as to all the requirements except that the amount exceeded the constitutional limit, the judge erred in reducing the amount of the bonds issued to a sum within such

limit and then declaring the issuance of such bonds would be allowed. Berrien County v. Paulk, 150 Ga. 829, 105 S.E. 491 (1920).

When petition did not present question whether notice was illegal because amount was unconstitutional, injunction would not lie to restrain the authorities from issuing a less and proper amount. Heilbron v. Mayor of Cuthbert, 96 Ga. 312, 23 S.E. 206 (1895).

When intervenors did not raise point that bonds were in excess of constitutional limit the intervenors' cannot, in the intervenors' bill of exceptions, assign this as error. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577 (1916).

Amount of interest. — Specifying that interest is to be paid annually is not sufficient; failure to specify the amount to be paid renders the notice defective. Mayor of Athens v. Hemerick, 89 Ga. 674, 16 S.E. 72 (1892); Mayor of Perry v. Norwood, 99 Ga. 300, 25 S.E. 648 (1896); City of Thomasville v. Thomasville Elec. Light & Gas Co., 122 Ga. 399, 50 S.E. 169 (1905).

Exact gross sum of interest not necessary. — It is not essential to the validity of the notice that the notice should state the precise gross sum, in dollars and cents, to be annually paid as interest; the facts actually stated furnishing a basis by which a calculation could be easily and readily made showing the exact amount of interest to be paid. Ponder v. Mayor of Forsyth, 96 Ga. 572, 23 S.E. 498 (1895).

Notice need not specify price of bonds. — Notice is not invalid because the price at which the bonds are to be sold is not stated therein. Wimberly v. County of Twiggs, 116 Ga. 50, 42 S.E. 478 (1902).

Notice silent as to collection of annual tax. — Fact that the notice of the bond election was silent as to the collection of the annual tax affords no reason why the bonds should not be validated. Woodall v. Town of Adel, 122 Ga. 301, 50 S.E. 102 (1905); Oliver v. City of Elberton, 124 Ga. 64, 52 S.E. 15 (1905).

Advertisement taken as best evidence of intentions of fund use. — Advertisement, a copy of which was attached to a petition as an exhibit, was the best evidence of the intention of the school board with respect to the use of the bond funds. In the absence of allegations of facts showing that the board had a secret, undisclosed intention to use the funds for some purpose other than that indicated by the advertisement or facts showing the deliberate perpetration of a fraud on the voters by the board, this advertisement must be taken as the best evidence of the board's intention with respect to the use of these funds. Miles v. State, 96 Ga. App. 610, 101 S.E.2d 173 (1957).

Special and General Laws

Local Act prescribing different manner of election is void as conflicting with general law. County of Dougherty v. Boyt, 71 Ga. 484 (1883).

Special law not void when the law merely prescribes additional requirements. — Special law which is void is one in conflict with a general law, and not one in harmony with the special and prescribing additional matters in regard to the election not in conflict with the general law. A special law providing that notice be published in an official gazette is construed in regard as to the general law as to what notice should contain. Farmer v. Mayor of Thomson, 133 Ga. 94, 65 S.E. 180 (1909).

Election under local Act must follow section. — Election under local Act making provision that in case of a school district the board of trustees of that district shall call the election on the question of whether the trustees shall incur a bonded debt to build and equip a schoolhouse must be concluded as provided by former Civil Code 1910, § 440 et seq. (see O.C.G.A. § 36-82-1 et seq.). Jennings v. New Bronwood Sch. Dist., 156 Ga. 15, 118 S.E. 560 (1923).

Local law concerning registration applies only to elections specified. — Local law for the registration of voters in a given county which declares it unlawful to vote at any election without having first registered, and then proceeds to require registration biennially in those years in which elections are held for Governor, members of Congress and of the General Assembly applies only to elections for the officers designated, leaving the general law to operate upon elections under this

Special and General Laws (Cont'd)

section. Kaigler v. Roberts, 89 Ga. 476, 15 S.E. 542 (1892) (see O.C.G.A. § 36-82-1).

Local Act concerning registration only for election of officers. — When an Act contemplates a system of registration for only one election annually, and consequently that system is confined to the election of municipal officers at an election held to determine the question of issuing bonds, there is no statutory requirement upon the municipal authorities to order registration as a preliminary to this election. Howell v. Mayor of Athens, 91 Ga. 139, 16 S.E. 966 (1893).

OPINIONS OF THE ATTORNEY GENERAL

County school bond referendum. — County school board is empowered to authorize the calling of a school bond referendum which the county election superintendent shall then call by publishing the appropriate notice. 1985 Op. Att'y Gen. No. 85-18.

Bond referendum may be held on date of presidential preference primary, but the bond referendum should be placed on a separate ballot so that voters need not request a party ballot to vote only in the referendum. 1975 Op. Att'y Gen. No. 75-132.

Appropriate use of bond proceeds and savings generated by bond refundings. — Georgia Constitution and Georgia statutes do not provide any latitude to use bond proceeds for additional capital expenditures whether or not the proceeds are spent on projects which may have been approved by the voters at the time of the original bond referendum. Accordingly, all proceeds generated at closing of the refunding issue should be spent on the costs of the refunding or used to pay principal, interest, and premiums on the refunded debt. Furthermore, a new tax levy appropriately sized to retire the new refunding bonds should be provided for prior to issuance of the refunding bonds. If any excess proceeds result from the new tax levy, such excess proceeds shall not be available for transfer to capital projects until all refundings are repaid. 1994 Op. Att'y Gen. No. 94-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 113 et seq., 126 et seq., 142.

C.J.S. — 20 C.J.S., Counties, § 354 et seq. 64A C.J.S., Municipal Corporations, § 2145 et seq.

ALR. — Change in law as to municipal bonds as affecting bonds previously authorized or voted, but not issued, 19 ALR 1055.

Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

Sale of municipal or other public bonds at less than par or face value, 91 ALR 7; 162 ALR 396.

Effect of inclusion in call for election, or in proposal for bond issue submitted to people, of unauthorized method of payment or retirement, 93 ALR 362.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters, 97 ALR 442.

Mistake, ambiguity, or omission in statement as to indebtedness, in call for election or proposal for bond issue, as affecting validity of election or bonds issued pursuant thereto, 116 ALR 1258.

Statement regarding cost of proposed public improvement in ballot for special election in that regard, 117 ALR 892.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 ALR 190.

Rights and obligations arising out of bid for municipal bond issue, 139 ALR 1047.

Constitutional or statutory requirement of prior approval by electors of issuance of bonds or incurring of indebtedness, by municipality, county, or state, as applicable to bonds or other instruments not creating indebtedness, 146 ALR 604.

Validity, within authorized debt, tax, or voted limit, of bond issue in excess of amount permitted by law, 175 ALR 823.

Validity of submission of proposition to voters at bond election as affected by inclusion of several structures or units, 4 ALR2d 617.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters, 10 ALR2d 559.

36-82-2. Voting in election for bonded debt; returns and declaration of election result.

The election provided for in Code Section 36-82-1 shall be held at all the voting or election precincts within the limits of the county, municipal corporation, or political subdivision and shall be held by the same persons, in the same manner, and under the same rules and regulations that elections for officers of the county, municipal corporation, or political subdivision are held. The returns shall be made to the officers calling or ordering the election. Such officers, in the presence of and together with the several managers, who shall bring up the returns, shall consolidate the returns and declare the result. (Ga. L. 1878-79, p. 40, § 2; Code 1882, § 508j; Civil Code 1895, § 378; Civil Code 1910, § 441; Code 1933, § 87-202.)

JUDICIAL DECISIONS

Independent issues cannot be submitted as single question. — When several distinct and independent propositions for the issuing of bonds by a municipality are submitted to the qualified voters of a town or city, provision should be made in the submission for a separate vote upon each. They cannot be lawfully combined and submitted to the voters as a single question. Rea v. City of LaFayette, 130 Ga. 771, 61 S.E. 707 (1908).

When contract entered into was submitted with other distinct propositions to the voters in an unauthorized manner, the contract may be declared void at the instance of the city. Americus Ry. & Light Co. v. Mayor of Americus, 136 Ga. 25, 70 S.E. 578 (1911).

Question of establishing school and incurring debt submitted at same time. — Question of establishing and maintaining school by local taxation and of authorizing town to incur a debt by issuing bonds for purpose of purchasing school property may be submitted to the qualified voters of the town at one and the same election, if the Act passed for this purpose be so framed as to accomplish this end. Brand v. Town of Lawrenceville, 104 Ga. 486, 30 S.E. 954 (1898).

Issue foreign to the matter of debt cannot be submitted to voters with a question of creating the debt, although the question as to the establishment of the enterprise for which the debt is to be incurred may be submitted with the question of incurring the debt. Cain v. Smith, 117 Ga. 902, 44 S.E. 5 (1903).

Joint canvass of returns by mayor, councilmen, and managers. — When on the day succeeding the election the mayor and councilmen, duly assembled, called into the meeting the managers of the election and jointly with them canvassed the returns and declared the result of the election, and in pursuance of such Act the mayor and councilmen passed a resolution reciting the declaration of the result in the manner indicated, this was a sufficient compliance with this section in regard to a joint declaration of the result of such election, and, consequently, a copy of the resolution was admissible upon proceedings to validate the bonds. Sewell

v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577 (1916) (see O.C.G.A. § 36-82-2).

Irregularity in registering voters. — If there was some irregularity in the manner of registering a few voters, but it did not appear that such persons voted in the election, or that the persons were in fact not qualified to register, or that such irregularity affected the result, this furnished no cause for declaring the election void, and refusing to validate bonds authorized thereby. Brumby v. City of Marietta, 132 Ga. 408, 64 S.E. 321 (1909).

Violation of directory provisions of city charter concerning influencing voters. — Violation of directory provisions of a city charter (concerning influencing voters) by some persons and a failure to enforce them by the election managers did not operate to invalidate the entire bond election, it not appearing that the result would have been otherwise had there been a compliance with such provisions. Brumby v. City of Marietta, 132 Ga. 408, 64 S.E. 321 (1909).

Consolidated returns prima facie correct. — When the duly elected managers of a municipal election held in a city, for the purpose of determining whether or not bonds should be issued for municipal purposes, submitted the consolidated returns to the mayor and general council of such city, "and consolidated and the result declared," showing that the election resulted in favor of bonds, such consolidation was prima facie correct. Brown v. City of Atlanta, 152 Ga. 283, 109 S.E. 666 (1921).

OPINIONS OF THE ATTORNEY GENERAL

Bond elections must be held in strict conformity with laws governing the elections. 1962 Op. Att'y Gen. p. 194.

Election concurrent with general election. — School bond election called by county board of education may be held concurrently with general election. 1965 Op. Att'y Gen. No. 65-9.

County superintendent of elections is proper person to conduct a school bond referendum and should certify the returns to the county board of education. 1985 Op. Att'y Gen. No. 85-18.

Bond referendum may be held on date of presidential preference primary, but the bond referendum should be placed on a separate ballot that voters need not request a party ballot to vote only in the referendum. 1975 Op. Att'y Gen. No. 75-132.

Ballots in school bond elections shall be furnished and election managers appointed by county board of education. 1950-51 Op. Att'y Gen. p. 44.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 133 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2145 et seq.

ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

36-82-3. Issuance of bonds upon favorable election vote; ordinance or resolution authorizing refunding bonds; issuance, content, and form of refunding bonds.

(a) When notice has been given and the election has been held, in accordance with Code Section 36-82-2, if the requisite majority of those qualified voters of the county, municipality, or political subdivision voting at the election vote for bonds, then the authority to issue the bonds in accordance with Article IX, Section V, Paragraph I or II of the

Constitution of Georgia is given to the proper officers of the county, municipality, or political subdivision.

(b) The ordinance or resolution of the governing body of the county, municipality, or other political subdivision of this state authorizing the issuance of general obligation refunding bonds in accordance with the terms and conditions of subsection (f) of Code Section 36-82-1 may be adopted at a regular or special meeting by a majority of the members of the governing body and, unless otherwise provided therein, such resolution or ordinance shall take effect immediately and need not be laid over or published or posted.

(c) General obligation refunding bonds may be issued in one or more series; may bear such date or dates; may mature at such time or times, and bear interest at such rate or rates per annum, payable at such time or times, subject to the limitations contained in subsection (f) of Code Section 36-82-1, pertaining to the final maturity date and maximum interest rate for such refunding bonds; may be payable in such medium of payment at such place or places; may be in such denomination or denominations; may be in such form, either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption, with or without a premium; may be executed in such manner; and may contain such terms, covenants, and conditions as the ordinance or resolution authorizing the issuance of such refunding bonds may provide. All general obligation refunding bonds issued under this article bearing the signature of officers in office on the date of the signing thereof shall be valid and binding, notwithstanding that before delivery thereof and payment therefor such officers whose signatures appear thereon shall have ceased to be officers of the governmental body issuing the bonds. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this article. Such refunding bonds and interim receipts shall be negotiable for all purposes. Such refunding bonds shall be and are declared to be nontaxable for any and all purposes. (Ga. L. 1878-79, p. 40, § 3; Code 1882, § 508k; Civil Code 1895, § 379; Civil Code 1910, § 442; Code 1933, § 87-203; Ga. L. 1983, p. 3, § 57; Ga. L. 1984, p. 1362, § 2.)

Editor's notes. — Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provided: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

JUDICIAL DECISIONS

Authority to issue bonds. — Former Civil Code 1910, § 442 (see O.C.G.A. § 36-82-3) gave express authority to issue bonds when the notice required by former Civil Code 1910, § 440 (see O.C.G.A. § 36-82-1) was given and the election held in accordance with former Civil Code 1910, § 441 (see O.C.G.A. § 36-82-2). Cowart v. City of Waycross, 159 Ga. 589, 126 S.E. 476 (1925).

This section must be given effect, subject to the change as made by Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I), in reference to the proportion of qualified voters necessary to authorize a bond issue; and no further enabling Act is necessary. McKnight v. City of Decatur, 200 Ga. 611, 37 S.E.2d 915 (1946) (see O.C.G.A. § 36-82-3).

County may issue bonds only when Constitution and laws complied with. — County may issue bonds to be paid for with funds derived from public taxation, and procure a judgment of the court confirming and validating the bonds, only when the Constitution and laws of the state have been fully complied with. Richter v. Chatham County, 146 Ga. 218, 91 S.E. 35 (1916).

Provision for annual tax must be made before bonds sold. — After the bonds have been validated, a provision for an annual tax must be made before the bonds can be sold and the debt be thereby actually incurred. Woodall v. Town of Adel, 122 Ga. 301, 50 S.E. 102 (1905); Oliver v. City of Elberton, 124 Ga. 64, 52 S.E. 15 (1905).

Past indebtedness. — Voters cannot authorize a bond issued for past indebtedness of a municipality. The voters must pass on the debt to be incurred. Mayor of Macon v. Jones, 122 Ga. 455, 50 S.E. 340 (1905).

Bonds may be payable in gold or lawful money. — It is lawful to make the proposed bonds "payable in gold, or lawful money of the United States, at the option of the holder." Heilbron v. Mayor of Cuthbert, 96 Ga. 312, 23 S.E. 206 (1895).

OPINIONS OF THE ATTORNEY GENERAL

School bond issue requires assent consisting of simply majority of those qualified voters in school bond election. 1963-65 Op. Att'y Gen. p. 769.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 139 et seq., 164.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2153 et seq.

ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 ALR 1027.

Right to call governmental bonds in advance of their maturity, 109 ALR 988.

Effect of delay after authorization by voters on power of governmental unit to issue bonds, 135 ALR 768.

Validity, within authorized debt, tax, or voted limit, of bond issue in excess of amount permitted by law, 175 ALR 823.

Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax, 68 ALR2d 1041.

36-82-4. Action for collection of bonds by holders.

When the bonds become due, the owners thereof, if necessary, may enforce their collection by action in the proper court. (Ga. L. 1878-79, p. 40, § 5; Code 1882, § 508m; Civil Code 1895, § 381; Civil Code 1910, § 444; Code 1933, § 87-205.)

JUDICIAL DECISIONS

Promissory note given by municipal corporation is invalid even in the hands of a bona fide endorsee for value before the note became due and although all but one of the notes had been paid this does not prevent the corporation from setting up the illegality of the contract in defense to a suit on the note. Town of Wadley v. Lancaster, 124 Ga. 354, 52 S.E. 335 (1905).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 309, 382, 394.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2203 et seq.

ALR. — Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 ALR 1027.

Priority or preference as between different issues of bonds of municipalities or political subdivisions, absent express provisions in that regard, 108 ALR 1018.

When limitations begin to run against actions on public securities or obligations to be paid out of special or particular fund, 50 ALR2d 271.

36-82-4.1. Advertisement of bond elections in counties having population of 400,000 to 500,000; use of bond funds.

(a) In addition to the requirements of Code Sections 36-82-1 through 36-82-4 governing elections for the issuance of bonds, in all counties of this state having a population of not less than 400,000 nor more than 500,000 according to the United States decennial census of 1990 or any future such census, every legal advertisement of a bond election shall contain a reference that any brochures, listings, or other advertisements issued by the governing body in such counties, or by any other person, firm, corporation, or association with the knowledge and consent of the governing body, shall be deemed to be a statement of intention of the governing body concerning the use of the bond funds; and such statement of intention shall be binding on the governing body and shall limit the expenditure of any such bond funds to the purpose specified in such statement of intention, unless the governing body uses such bond funds for the retirement of bonded indebtedness in the manner provided by subsection (b) of this Code section. Such statement of intention shall also be set forth in the resolution pursuant to which such bonds are issued.

(b) The governing body in the counties specified in subsection (a) of this Code section may, by a two-thirds' vote, declare any project which has been proposed pursuant to a statement of intention provided for in subsection (a) of this Code section to be unnecessary. In that event, the governing body shall use such bond funds for the payment of all or any part of the principal and interest on any bonded indebtedness of such county then outstanding.

(c) In the counties specified in subsection (a) of this Code section, interest received from bond funds which have been invested and

surpluses from the overestimated projects shall be used first to complete underestimated projects; and all remaining funds received from interest and overestimated projects shall be used for other projects or improvements which the governing body in such counties may deem necessary and which are encompassed within the language of the statement of purpose in the election notice. Any meetings of any governing bodies at which any bond fund allocation is made shall be open to the public. Such meetings shall be announced to the news media in advance and shall be open to the news media.

(d) In the counties specified in subsection (a) of this Code section, 90 percent of the net proceeds received from sale of the bonds less:

(1) Amounts allocated to the payment of bond issuance expenses;

(2) Amounts allocated for purchase of furnishings and equipment;

(3) Amounts allocated for contingencies; and

(4) Amounts allocated for work to be performed by employees of the issuing entity and materials and equipment therefor

shall be obligated for payment pursuant to a contract or contracts within 36 months from the date of issuance and delivery of such bonds. The remaining bond proceeds shall either be obligated pursuant to a contract or contracts or actually expended within 48 months from the date of issuance and delivery of such bonds. Any bond proceeds not expended or obligated within 48 months from the date of issuance and delivery of such bonds shall be paid to the sinking fund for the retirement of the bonds issued. For purposes of this subsection, land which is being acquired through condemnation proceedings shall be considered obligated for payment pursuant to a contract in an amount equal to the sum of moneys deposited with the court pursuant to a special master or other appropriate judicial proceedings. The provisions of this subsection shall apply to all general obligation bonds issued and delivered on or after December 1, 1986. (Code 1933, § 87-201.1, enacted by Ga. L. 1981, p. 1439, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1988, p. 1921, § 1; Ga. L. 1992, p. 1232, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a colon was added at the end of the introductory paragraph of subsection (d).

36-82-4.2. Expenditure of bond funds for purposes other than stated in public bond notice.

(a) When, subsequent to the issuance of any bonds pursuant to the provisions of this article, the governing authority of any county, municipal corporation, or political subdivision adopts by a two-thirds' majority vote a resolution declaring that:

(1) A portion of the bond funds remains after the purpose stated in the notice required by subsection (b) of Code Section 36-82-1 has been achieved or accomplished;

(2) The purpose stated in such notice is no longer necessary; or

(3) Circumstances have changed such that the expenditure of all or part of such bond funds is no longer practicable or feasible,

the governing authority shall be authorized to expend such bond funds, including interest, for purposes of a nature substantially similar to the purpose stated in such notice or to reduce the bonded indebtedness of the county, municipality, or political subdivision.

(b) Not sooner than ten days prior to expending bond funds as provided in subsection (a) of this Code section, the governing authority shall cause to be published once in the official county organ a copy of the resolution adopted pursuant to subsection (a) of this Code section, which resolution shall set forth the reason the bond funds were not expended for the original purpose and shall state the purpose for which such funds will be expended. In addition, the governing authorities shall cause a copy of such resolution to be sent by registered or certified mail or statutory overnight delivery to any trustee for bondholders or other paying agent. (Code 1981, § 36-82-4.2, enacted by Ga. L. 1990, p. 1441, § 1; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment of this Code section is applicable with respect to notices delivered on or after July 1, 2000.

OPINIONS OF THE ATTORNEY GENERAL

Construction of school administration, maintenance, and storage facilities. — Proceeds of general obligation bonds issued under O.C.G.A. §§ 20-2-430 and 20-2-431 may not be used for school administration, maintenance, and storage facilities, but bonds may be issued for such purposes upon compliance by the county school board with the notice and purpose requirements set forth in O.C.G.A. Ch. 82, T. 36. 1998 Op. Att'y Gen. No. 98-12.

36-82-5. Destruction of unsold bonds.

When any county, municipality, or political subdivision of this state has issued bonds under the authority of Article IX, Section V, Paragraph I, II, or III of the Constitution of Georgia and laws passed in pursuance thereof and when, after the bond issue is authorized and the bonds are printed, any of the bonds authorized and printed are not sold for any reason, the governing authorities of the county, municipality, or political subdivision may destroy the unsold bonds in the manner and under the conditions set out in Code Section 36-82-6. (Ga. L. 1941, p. 426, § 1; Ga. L. 1983, p. 3, § 57; Ga. L. 1984, p. 1362, § 3.)

Editor's notes. — Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provided: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

36-82-6. Notice, hearing, order of court, and affidavit of two disinterested witnesses as to destruction of bonds; compensation of witnesses; payment of costs of proceedings.

(a) The governing authorities of the county, municipal corporation, or political subdivision shall publish a notice, once a week for four consecutive weeks, in the newspaper in which county advertisements are usually published in the county or in the county in which the municipal corporation or political subdivision is located. The notice shall indicate that the unsold bonds will be destroyed at the time and at the place in the county, municipal corporation, or political subdivision stated in the notice.

(b) If no objection is filed by a taxpayer of the county, municipal corporation, or political subdivision with the clerk of the superior court of the county or of the county in which the municipal corporation or political division is located, at least five days before the date stated in the notice, or if such objection is filed and the judge of the superior court, after hearing, determines the objection to be without merit, the judge of the superior court shall order the unsold bonds destroyed by fire at the time and place stated in the notice or at the time and place stated in the order of the court.

(c) The judge shall also name two disinterested witnesses, who are neither officers nor employees of the county, municipal corporation, or political subdivision, to attend the destruction of the bonds, whose affidavits, filed with the clerk of the superior court, shall be prima-facie evidence that the bonds have been destroyed. The affidavits of the witnesses shall be preserved as records of the office of the clerk of the superior court. The witnesses shall be compensated for their services in the amount of $5.00 each.

(d) All costs of such proceedings shall be paid by the county, municipal corporation, or political subdivision, except where an objection filed is determined to be without merit, in which case costs of the pleadings, hearings, and judgment on the objection shall be taxed against the person objecting. (Ga. L. 1941, p. 426, § 2.)

36-82-7. Authorized investments for bond proceeds.

The proceeds of any bonds issued by any county, municipal corporation, school district, or other political subdivision of this state or any portion thereof or any authority or other public body corporate and politic created under the Constitution or laws of this state may, from time to time, be placed for investment and reinvestment in the local government investment pool created in Chapter 83 of this title by the governing authorities of the county, municipal corporation, school district, political subdivision, authority, or body or be invested and reinvested by the governing authorities of the county, municipal corporation, school district, political subdivision, authority, or body in the following securities, and no others:

(1) Bonds or obligations of such county, municipal corporation, school district, political subdivision, authority, or body or bonds or obligations of this state or other states or of other counties, municipal corporations, and political subdivisions of this state;

(2) Bonds or other obligations of the United States or of subsidiary corporations of the United States government which are fully guaranteed by such government;

(3) Obligations of and obligations guaranteed by agencies or instrumentalities of the United States government, including those issued by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, and any other such agency or instrumentality now or hereafter in existence; provided, however, that all such obligations shall have a current credit rating from a nationally recognized rating service of at least one of the three highest rating categories available and have a nationally recognized market;

(4) Bonds or other obligations issued by any public housing agency or municipal corporation in the United States, which such bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipal corporation in the United States which are fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(5) Certificates of deposit of national or state banks located within this state which have deposits insured by the Federal Deposit Insurance Corporation and certificates of deposit of federal savings and loan associations and state building and loan or savings and loan associations located within this state which have deposits insured by

the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or the Georgia Credit Union Deposit Insurance Corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds. The portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, or the Georgia Credit Union Deposit Insurance Corporation, if any, shall be secured by deposit, with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank or federal savings and loan association or state building and loan or savings and loan association located within this state or with a trust office within this state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess: direct and general obligations of this state or other states or of any county or municipal corporation in this state, obligations of the United States or subsidiary corporations included in paragraph (2) of this Code section, obligations of the agencies and instrumentalities of the United States government included in paragraph (3) of this Code section, or bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in paragraph (4) of this Code section;

(6) Securities of or other interests in any no-load, open-end management type investment company or investment trust registered under the Investment Company Act of 1940, as from time to time amended, or any common trust fund maintained by any bank or trust company which holds such proceeds as trustee or by an affiliate thereof so long as:

(A) The portfolio of such investment company or investment trust or common trust fund is limited to the obligations referenced in paragraphs (2) and (3) of this Code section and repurchase agreements fully collateralized by any such obligations;

(B) Such investment company or investment trust or common trust fund takes delivery of such collateral either directly or through an authorized custodian;

(C) Such investment company or investment trust or common trust fund is managed so as to maintain its shares at a constant net asset value; and

(D) Securities of or other interests in such investment company or investment trust or common trust fund are purchased and redeemed only through the use of national or state banks having corporate trust powers and located within this state; and

(7) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least $50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least $50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys. (Ga. L. 1947, p. 1173, § 1; Ga. L. 1969, p. 961, § 1; Ga. L. 1976, p. 400, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 1461, § 1; Ga. L. 1987, p. 334, § 1; Ga. L. 1991, p. 338, § 1; Ga. L. 1992, p. 6, § 36; Ga. L. 2010, p. 404, § 2/SB 369.)

The 2010 amendment, effective July 1, 2010, inserted "or other states" in the middle of paragraph (1); substituted the present provisions of paragraph (3) for the former provisions, which read: "Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Central Bank for Cooperatives;"; in the last sentence of paragraph (5), inserted "or with a trust office within this state", inserted "or other states", inserted "and instrumentalities", and deleted "and" at the end following "Code section;"; in paragraph (6), substituted "paragraphs (2) and (3)" for "paragraph (2)" in subparagraph (6)(A) and added "and" at the end of subparagraph (6)(D); and added paragraph (7).

Cross references. — Authorized investments of counties, municipalities, and other entities, generally, § 36-83-4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, a comma was inserted following the second "authority" in the introductory language.

JUDICIAL DECISIONS

Use of bond money to buy bonds approved when insufficient to build project. — Under this section, a county board of education does not abuse the board's discretion, when the board determines that it would be impossible to build a schoolhouse with the amount of bond money on hand, in using the money to buy more bonds. Williams v. Ragsdale, 205 Ga. 274, 53 S.E.2d 339 (1949) (see O.C.G.A. § 36-82-7).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 109.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2167.

ALR. — Constitutionality, construction, and application of statute empowering municipal corporation to issue bonds the proceeds of which shall be invested in municipal securities, 108 ALR 736.

36-82-7.1. Assessment and collection of tax to pay refunding bonds.

Any county, municipality, or other political subdivision of this state shall at or before the issuance and delivery of any general obligation refunding bonds provide for the assessment and collection of an annual tax sufficient in amount to pay the principal and interest on such refunding bonds as same become due and payable, all as is provided in Article IX, Section V, Paragraph VI of the Constitution of Georgia. (Code 1981, § 36-82-7.1, enacted by Ga. L. 1984, p. 1362, § 4.)

Editor's notes. — Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provided as follows: "The provisions of this Act [which enacted this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

36-82-8. Deduction of sinking fund in computing bonded indebtedness.

All amounts collected and held in a sinking fund pursuant to Article IX, Section V, Paragraph VI of the Constitution of Georgia, irrevocably pledged and appropriated to the retirement of the outstanding bonded indebtedness for which they are collected, which can be legally used for no other purpose, shall be deductible from total bonded debt in computing the constitutional limitation on the bonded indebtedness of a political subdivision of this state under Article IX, Section VII of the Constitution of Georgia. (Ga. L. 1958, p. 203, § 1; Ga. L. 1983, p. 3, § 57.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 5, 6.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2184 et seq.

ALR. — Liability of officer for loss of sinking fund through failure of bank, 25 ALR 1358.

Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 ALR 220.

36-82-9. Certification requirement for pension obligation bonds; requirement for reserve fund.

(a) As used in this Code section, the term:

(1) "Annual savings" means the difference between the annual debt service payments on pension obligation bonds and the annual

required contribution to fund the unfunded actuarial accrued liability of the pension fund.

(2) "Level debt structure" means the establishment of a bond repayment schedule that requires equal annual debt service payments, including both principal and interest, over the life of the debt issue.

(3) "Pension obligation bond" means a bond issued as a general obligation bond in accordance with the provisions of this chapter, the proceeds of which are deposited with the government's retirement system administrator to liquidate, in whole or in part, the government's unfunded accrued actuarial liability to the government's retirement plan.

(b) No political subdivision shall issue any pension obligation bond unless the state auditor has certified that such bonds comply fully with the provisions of this Code section.

(c) All pension obligation bonds shall:

(1) Be general obligation bonds subject to the provisions of the Constitution of the State of Georgia and this chapter relating to general obligation bonds;

(2) Be included as a component of the total debt of the political subdivision subject to the debt limits provided in Article IX, Section V of the Constitution of the State of Georgia;

(3) Be issued on a competitive basis;

(4) Specify a level debt structure; and

(5) Specify a maturity not longer than 20 years.

(d) An amount not less than 5 percent of the annual savings shall be deposited into a reserve fund as protection against changes that might impact the future financial condition of the pension system.

(e) Neither the political subdivision issuing pension obligation bonds nor any department, agency, authority, retirement system, or pension fund of such political subdivision shall purchase the pension obligation bonds so issued. (Code 1981, § 36-82-9, enacted by Ga. L. 2001, p. 810, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, Code Section 36-82-9, as enacted by Ga. L. 2001, p. 1033, § 1, was redesignated as Code Section 36-82-10.

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For note on the 2001 enactment of this Code section, see 18 Ga. St. U. L. Rev. 193 (2001).

36-82-10. Reporting requirements.

(a) As used in this Code section, the term "political subdivision" means any municipality, county, local government authority, board, or commission empowered to enter into debt. Such term shall not include any state agency or state authority.

(b) A political subdivision which issues general obligation bonds, revenue bonds, or any other bonds, notes, certificates of participation, or other such obligations of that political subdivision in an amount exceeding $1 million shall file a report with the Department of Community Affairs which contains the following:

(1) Name of issuer;

(2) Whether the issue is a new issue or a refinancing or refunding;

(3) Total amount issued;

(4) Term of issue;

(5) Detailed description of purpose or purposes;

(5.1) Whether the issue is a general obligation bond, revenue bond, or other bond, note, certificate of participation, or other obligation;

(6) Name of underwriter;

(7) Proceeds used for bond issuance costs, including underwriters' discount as reported on Line 24 of the United States Department of Treasury's Internal Revenue Service Form 8038-G;

(8) Name of bond counsel;

(9) Interest rate; and

(10) True or net interest costs.

Such information shall be reported to the Department of Community Affairs in accordance with Code Section 36-81-8. (Code 1981, § 36-82-10, enacted by Ga. L. 2001, p. 1033, § 1; Ga. L. 2006, p. 1021, § 1/HB 1012; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, Code Section 36-82-9, as enacted by Ga. L. 2001, p. 1033, § 1, was redesignated as Code Section 36-82-10.

ARTICLE 2

VALIDATION OF BONDS

JUDICIAL DECISIONS

Duties of superior court judge set forth. — Under the provisions of this article, a superior court judge's duties are simply to hear and determine all questions of law and fact in a proceeding brought by the solicitor general (now district attorney) in the name of the state and against the county or municipality or political subdivision to validate their proposed bonds. In such a proceeding the sole issue is whether the proceeding by the county or municipality or other political subdivision for the issuance of such bond was legal, that is, whether all the provisions of the law have been complied with. Clinkscales v. State, 102 Ga. App. 670, 117 S.E.2d 229 (1960) (see O.C.G.A. Art. 2, Ch. 82, T. 36).

Cited in Posey v. Dooly County Sch. Dist., 215 Ga. 712, 113 S.E.2d 120 (1960); Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651 (1962).

RESEARCH REFERENCES

ALR. — Constitutionality, construction, application, and effect of statute requiring judicial approval before issuance or sale of municipal or county bonds or obligations, 87 ALR 706; 102 ALR 90.

Printing, lithographing, or other mechanical signature on public bonds, coupons, or other public pecuniary obligation, 94 ALR 768.

PART 1

GENERAL PROVISIONS

36-82-20. Notice to district attorney or Attorney General of election or resolution favoring issuance of bonds or refunding bonds.

(a) When any county, municipality, or political subdivision desiring to incur any bonded debt, as prescribed in Article IX, Section V, Paragraphs I and II of the Constitution of Georgia, holds an election or passes a resolution in accordance with the provisions of the Constitution and laws of this state controlling and regulating such elections or the passage of such resolutions and the returns of such election or resolution show prima facie that the election or resolution is in favor of the issuance of the bonds, the officer or officers of the county, municipality, or political subdivision charged by law with the duty of declaring the result of the election or resolution, within six months after so declaring the result of the election or of the passage of the resolution, shall notify the district attorney of the judicial circuit in which the county, municipality, or political subdivision is located, in writing, of the fact that an election was held or that a resolution was passed and that the election or resolution was in favor of the issuance of the bonds. The service of the notice shall be personal upon the district attorney; in the

event that he is absent from the circuit, the notice shall be served in person upon the Attorney General.

(b) It is expressly provided that when the governing body of any county, municipality, or political subdivision desiring to issue refunding bonds as provided by Article IX, Section V, Paragraph III of the Constitution of Georgia shall have adopted a resolution or ordinance authorizing the issuance of refunding bonds, the proper officer or officers of such county, municipality, or political subdivision, within six months after the adoption of such resolution or ordinance authorizing the issuance of such refunding bonds, shall notify the district attorney of the judicial circuit in which such county, municipality, or political subdivision is located, in writing, of the fact that the requirements pertaining to the issuance of general obligation refunding bonds have been met and that the issuance of such refunding bonds has been authorized by a resolution or ordinance duly adopted by the governing body of such county, municipality, or political subdivision and shall furnish the district attorney with a certified copy of such resolution or ordinance authorizing the issuance of such refunding bonds. The service of such notice shall be personal upon the district attorney; in the event that he is absent from the circuit, the notice shall be served in person upon the Attorney General. (Ga. L. 1897, p. 82, § 1; Civil Code 1910, § 445; Ga. L. 1920, p. 63, § 1; Code 1933, § 87-301; Ga. L. 1946, p. 80, § 1; Ga. L. 1961, p. 168, § 1; Ga. L. 1983, p. 3, § 57; Ga. L. 1984, p. 1362, § 5.)

Editor's notes. — Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provided: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

Law reviews. — For article discussing the impact on bond issues of challenges to voting procedures, see 15 Ga. St. B.J. 15 (1978).

JUDICIAL DECISIONS

This section is not unconstitutional on the ground that it makes no provision for a trial by jury in reference to the matters for the investigation of which provision is therein made. Lippitt v. City of Albany, 131 Ga. 629, 63 S.E. 33 (1908) (see O.C.G.A. § 36-82-20).

This section is not unconstitutional on the grounds that the statute deprives citizens of property without due process of law by excluding further investigation as to validity of the bonds after judgment of confirmation and validation. Lippitt v. City of Albany, 131 Ga. 629, 63 S.E. 33 (1908) (see O.C.G.A. § 36-82-20).

This section does not violate Ga. Const. 1976, Art. IX, Sec. VII, Para. I (see Ga. Const. 1983, Art. IX, Sec. V, Para. I), as there is no merit in the contention that the statute seeks to confer power to incur debts without the consent of two-thirds (now majority) of the voters by the authorizing of confirmation bonds which have not received the required vote.

Lippitt v. City of Albany, 131 Ga. 629, 63 S.E. 33 (1908) (see O.C.G.A. § 36-82-20).

Limited unconstitutionality. — Insofar as former Civil Code 1910, § 445 et seq. (see O.C.G.A. § 36-82-20 et seq.), authorized the judge of the superior court to hear and determine the proceeding in a county other than that so fixed by the Constitution, the statute was invalid and must yield to the constitutional requirement on that subject. Ray v. City of Lavonia, 141 Ga. 626, 81 S.E. 884 (1914).

Constitutionality — When the constitutionality of former Civil Code 1910, § 445 et seq. (see O.C.G.A. § 36-82-20 et seq.) was not raised in a lower court, it was not considered in the Supreme Court. Edwards v. Town of Guyton, 140 Ga. 553, 79 S.E. 195 (1913).

Purpose of section. — Purpose of this section is to provide a method by which it should be judicially investigated and determined whether the law, constitutional and statutory, has been complied with, so as to declare bonds referred to therein valid before their issuance. Lippitt v. City of Albany, 131 Ga. 629, 63 S.E. 33 (1908) (see O.C.G.A. § 36-82-20).

Provisions of this section are mandatory and must be strictly complied with. State v. Chatham County, 103 Ga. App. 390, 119 S.E.2d 120 (1961) (see O.C.G.A. § 36-82-20).

Validation upon substantial compliance. — When the record discloses the fact that all the requirements in relation to notice and providing for an election to determine whether bonds should be issued were either literally or substantially complied with, judgment validating such bonds is affirmed. Wimberly v. County of Twiggs, 116 Ga. 50, 42 S.E. 478 (1902).

Absence of payment provision. — It is not incumbent upon the court to inquire into the question as to whether provision for payment has been made in conformity with the requirements of the Constitution. The bonds are not to be issued until after they are validated. If nothing appears as to what provision is to be made with reference to payment of the bonds, it will be presumed that if provision has not already been made it will be made in accordance with the Constitution and laws. Wilkins v. City of Waynesboro, 116 Ga. 359, 42 S.E. 767 (1902); Oliver v. City of Elberton, 124 Ga. 64, 52 S.E. 15 (1905).

No validation if payment unlawful. — If when the application is made to validate the issue of bonds it appears to the judge, either from the pleadings or otherwise, that the authorities of the municipality or county do not intend to make provision for the payment of the bonds in the manner required by the Constitution, the judge should not render a judgment validating the issue of bonds. Wilkins v. City of Waynesboro, 116 Ga. 359, 42 S.E. 767 (1902); Oliver v. City of Elberton, 124 Ga. 64, 52 S.E. 15 (1905).

Notice should be served as required by statute. — Notice which this section requires to be given to the solicitor general (now district attorney) by the officers charged by law with the duty of declaring the result of an election held by any county, municipality, or division for the purpose of incurring any bonded indebtedness as therein provided, must be served upon the solicitor general (now district attorney) in the manner therein prescribed and within the time therein specified, and should notify the solicitor general (now district attorney) that an election for the issuance of bonds was held in the county, municipality, or division, and that the election was in favor of the issuance of such bonds; and it is not necessary to the validity of such notice that a copy of the resolution authorizing the election be incorporated in the notice or attached thereto. Rich v. Brinson Consol. Sch. Dist., 28 Ga. App. 530, 112 S.E. 164, cert. denied, 28 Ga. App. 819 (1922) (see O.C.G.A. § 36-82-20).

When notice properly served, bonds should be validated. — When a notice of an election held for the purpose of incurring a bonded indebtedness was properly served upon the solicitor general (now district attorney) and gave to that officer the necessary notice required by law, and had attached thereto what purported to be a true and correct copy of the resolution passed by the proper authorities ordering the election, and which copy was referred to in the notice given to the solicitor general (now district attorney), it was not error, upon the hearing of an intervention to the proceeding to validate

the bonds authorized by the election, for the trial judge, over the objection of the intervenors, to allow the officers giving the notice to amend the notice by withdrawing or striking the attached copy of the resolution authorizing the election and substituting in lieu thereof another copy, alleged to be a true and correct copy of the resolution authorizing the election. Rich v. Brinson Consol. Sch. Dist., 28 Ga. App. 530, 112 S.E. 164, cert. denied, 28 Ga. App. 819 (1922).

Single proceeding may be had to validate several series of bonds. — When there are three series of bonds to be issued, each for a separate purpose, a single proceeding may be maintained to validate the bonds, the items being submitted separately. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577 (1916).

Bonds may be valid notwithstanding refusal to validate. — Judgment refusing to validate bonds not being based on the invalidity of the bonds is not the equivalent of a judgment declaring the bonds illegal. Bonds may be valid and binding notwithstanding a refusal of the court to confirm and validate. Tyson v. McIntosh County, 147 Ga. 233, 93 S.E. 407 (1917); Harrell v. Whigham, 147 Ga. 558, 94 S.E. 994 (1918).

Fact that judgment of validation void has no effect on bonds legally issued. — Even if the proceedings to validate bonds were void, the sale of the bonds issued in conformity with former Civil Code 1910, § 441 et seq. (see O.C.G.A. §§ 36-82-2 et seq. and 36-82-20), would not be enjoined merely because the judgment of validation was void. Durrence v. City of Statesboro, 147 Ga. 175, 93 S.E. 88 (1917); Tyson v. McIntosh County, 147 Ga. 233, 93 S.E. 407 (1917).

Extent of power of superior court. — In a proceeding to validate bonds, it is within the power and jurisdiction of the superior court upon proper pleadings and sufficient evidence, to pass upon the validity of any votes cast in the election, and to eliminate such votes as are shown by the pleadings and the evidence to be illegal. King v. County Bd. of Educ., 174 Ga. 685, 164 S.E. 52 (1932).

Unlawful use of bonds. — Fact that the city may intend to use the proceeds of the bonds in an unlawful manner, the bonds being voted for a lawful purpose, is not a ground for refusing to validate. Gracen v. Mayor of Savannah, 142 Ga. 141, 82 S.E. 453 (1914).

Refusal of validation no remedy for unlawful use of proceeds. — If the public authorities should seek to use in an unlawful manner, or for an unlawful purpose, the proceeds of the bonds thus authorized, the remedy is not by a refusal to validate the bonds for the purpose for which the bonds were authorized. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456 (1968).

Validation not collusive because uncontested. — Validation is not held to be collusive because the validation is uncontested for a complaining citizen has the right to become a party and contest the validation. Farmer v. Mayor of Thomson, 133 Ga. 94, 65 S.E. 180 (1909).

There is no law which would prevent any party to proceeding from introducing evidence which would establish existence of facts necessary to validation of bonds. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456 (1968).

Rights of taxpayers who failed to make themselves parties. — When an election, held to determine whether municipal bonds should be issued, resulted in favor of such issuance, and the bonds were duly validated in accordance with these provisions, the citizens and taxpayers who could have made themselves parties to the proceedings to validate the bonds, but failed to do so, were concluded by the judgment rendered, and could not thereafter enjoin the collection of a tax to pay the interest and part of the principal falling due, on the ground that some of the bonds were for a purpose not authorized by the Constitution. Jenkins v. Mayor of Savannah, 165 Ga. 121, 139 S.E. 863 (1927).

Sufficiency of petition. — Petition to validate bonds must set forth a strict compliance with the law by: service of the notice required by this section; the name of the political subdivision seeking to issue the bonds; the purpose for which the bonds are to be issued; the principal amount of the bonds; what interest the

bonds are to bear, or the maximum per annum rate of interest specified in the election notice; and the amount of principal to be paid annually. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456 (1968) (see O.C.G.A. § 36-82-20).

Burden of proof in action to validate bonds. — It was incumbent upon the petitioner in an action to validate bonds to make out a prima facie case by proving each of the substantial and material allegations set forth in former Civil Code 1910, §§ 441 and 445 (see O.C.G.A. §§ 36-82-2 and 36-82-20) as necessary allegations of the petition. When this was done the burden is cast upon the defendant, or upon a proper party as intervenor, to set up and establish any other fact which by aliunde proof would render the bond election invalid. King v. County Bd. of Educ., 42 Ga. App. 563, 156 S.E. 710 (1931), aff'd by operation of law, 174 Ga. 685, 164 S.E. 52 (1932).

Cited in Liner v. City of Rossville, 213 Ga. 756, 101 S.E.2d 753 (1958).

OPINIONS OF THE ATTORNEY GENERAL

Discussion of the hiring of private law firms by political subdivisions for the purposes of validating and providing opinions as to the legality of state and municipal bonds. 1963-65 Op. Att'y Gen. p. 590.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 352.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2153 et seq.

ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

36-82-21. Petition to superior court to show cause; service of petition and order; answers.

(a) Within 20 days from the date of the service upon the district attorney or the Attorney General of notice of the fact that an election was held or a resolution passed and that the election or resolution was in favor of the issuance of the bonds, the district attorney or the Attorney General shall prepare and file a petition in the office of the clerk of the superior court of the county in which the election was held or the resolution was passed, directed to the superior court of the county, in the name of the state, and against the county, municipality, or political subdivision desiring to issue bonds under the election or resolution. The petition shall set forth the service of the notice, the name of the county, municipality, or political subdivision seeking to issue the bonds, the principal amount of the bonds to be issued, the purpose for which the bonds are issued, the interest rate or rates which the bonds are to bear, and the amount of principal to be paid in each year during the life of the bonds and shall state that the election or resolution is prima facie in favor of the issuance of the bonds. The petition, in lieu of specifying the rate or rates of interest which the bonds are to bear, may set forth the wording which was used with respect to interest in the notice which was published calling the election to authorize the issuance of the bonds. The district attorney or the

Attorney General shall obtain, from the judge of the court, an order requiring the county, municipality, or political subdivision, by its proper officers, to appear at such time and place, either in term or at chambers, within 20 days from the filing of the petition, as the judge of the court may direct, and to show cause, if any exists, why the bonds should not be confirmed and validated. The petition and order shall be served in the manner provided by law for the service of petitions upon counties, municipalities, or political subdivisions. The officers of the county, municipality, or political subdivision shall make sworn answers to such petition at or before the date set in the order for the hearing.

(b) Within 20 days from the date of the service upon the district attorney or the Attorney General of notice of the fact that a resolution or ordinance was adopted by the governing body of the county, municipality, or other political subdivision authorizing the issuance of refunding bonds, the district attorney or the Attorney General shall prepare and file a petition in the office of the clerk of the superior court of the county in which the county, municipality, or other political subdivision desiring to issue refunding bonds is located, directed to the superior court of the county, in the name of the state, and against the county, municipality, or political subdivision desiring to issue refunding bonds under the resolution or ordinance. The petition shall set forth the service of the notice, the name of the county, municipality, or political subdivision seeking to issue the refunding bonds, the maximum principal amount of the refunding bonds to be issued, the interest rate or rates which the bonds are to bear, and also setting forth the principal amount of outstanding bonded indebtedness to be refunded, the amount of principal to be paid in each year over the remaining life of the bonds to be refunded, the interest rate or rates per annum said outstanding bonds which are to be refunded bear and a certified copy of the resolution or ordinance so adopted authorizing the issuance of the refunding bonds shall be attached to the petition and made a part thereof. The petition, in lieu of specifying the rate or rates of interest which the refunding bonds are to bear, may state that the refunding bonds when issued will bear interest at a rate or rates not exceeding a maximum rate per annum. The district attorney or the Attorney General shall obtain, from the judge of the court, an order requiring the county, municipality, or political subdivision, by its proper officers, to appear at such time and place, either in term or at chambers, within 20 days from the filing of the petition, as the judge of the court may direct, and to show cause, if any exists, why the refunding bonds should not be confirmed and validated. The petition and order shall be served in the manner provided by law for the service of petitions upon counties, municipalities, or political subdivisions. The officers of the county, municipality, or political subdivision shall make sworn answers to such petition at or before the date set in the order for the hearing. (Ga. L.

1897, p. 82, § 2; Civil Code 1910, § 446; Ga. L. 1920, p. 63, § 2; Code 1933, § 87-302; Ga. L. 1960, p. 1034, § 1; Ga. L. 1961, p. 168, § 2; Ga. L. 1984, p. 1362, § 6.)

Editor's notes. — Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provided: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

JUDICIAL DECISIONS

Provision for time of hearing directory. — Provision of this section, which prescribes the time within which the judge of the superior court shall fix the hearing on the petition to validate an issue of municipal bonds, and the time within which the judge shall hear and determine the same is directory only. Spencer v. City of Columbus, 150 Ga. 312, 103 S.E. 464 (1920); Perkins v. Norristown (42) Sch. Dist., 151 Ga. 414, 107 S.E. 42 (1921) (see O.C.G.A. § 36-82-21).

Provision as to time of filing petition mandatory. — Provision in this section requiring the solicitor general (now district attorney) to file the petition within 20 days from date of service upon the solicitor general (now district attorney) was not merely directory, but mandatory. Roff v. Town of Calhoun, 110 Ga. 806, 36 S.E. 214 (1900) (see O.C.G.A. § 36-82-21).

No right to file petition after 20 days. — Solicitor general (now district attorney) has no authority, after the expiration of 20 days from the date of the service upon the solicitor general (now district attorney) of the notice provided for by Ga. L. 1987, p. 82, § 1 (see O.C.G.A. § 36-82-20), relating to "the confirming and validating of" bonds, to file the petition prescribed by Ga. L. 1987, p. 82, § 2 (see O.C.G.A. § 36-82-21), and such a petition, if filed too late, cannot be made the basis of any valid judicial action. Roff v. Town of Calhoun, 110 Ga. 806, 36 S.E. 214 (1900).

Sufficiency of petition. — It is necessary, of course, to state the facts, and this should be done with sufficient particularity to meet the requirements of good pleading. A petition which fails to show, except by a bare conclusion, that the election resulted prima facie in favor of the issuance of the bonds is fatally defective and subject to general demurrer (now motion to dismiss). Edwards v. City of Clarkesville, 35 Ga. App. 306, 133 S.E. 45 (1926).

Necessary elements in petition. — Petition to validate bonds must show that an election was held pursuant to the provisions of Article 1 of this chapter and that the result of the election was prima facie in favor of issuance of the bonds. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456 (1968).

Unnecessary allegations. — Petition need not set out any details relating to the required number of voters. Spencer v. City of Clarkesville, 129 Ga. 627, 59 S.E. 274 (1907); Davis v. Orland Consol. Sch. Dist., 152 Ga. 76, 108 S.E. 466 (1921).

This section does not require that petition should allege that amount of bonds is within constitutional limitation as to the debt to be incurred by a municipal corporation or political division. Such matter, however, may be urged by an intervenor on the trial. If the intervenor should urge such matter, the burden is upon the intervenor to plead and prove the matter. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577 (1916) (see O.C.G.A. § 36-82-21).

It is not necessary that a list of voters and tally sheets of an election should be set out in or attached to a petition. Stephens v. School Dist. No. 3, 154 Ga. 275, 114 S.E. 197 (1922).

Law does not require an allegation as to publication of the notice to the voters, or as to the furnishing of the list of the registered voters (it being sufficient merely to show the number of such voters), or as to the city's indebtedness not exceeding the limit allowed by the Constitution. Edwards v. City of Clarkesville, 35 Ga. App. 306, 133 S.E. 45 (1926).

Proceeding, brought by a solicitor general (now district attorney) to validate bonds to be issued by a school district in a county of this state, need only allege facts to meet the requirements of this section and it is therefore unnecessary that the solicitor general (now district attorney) allege that the school district was one "in which a local tax is now or may hereafter be levied for school purposes," or is a school district "in a county now levying a local tax." These matters are matters of defense to the validation proceeding. Hardrick v. State, 53 Ga. App. 299, 185 S.E. 577 (1936) (see O.C.G.A. § 36-82-21).

Misnomer of the municipality in petition to validate bonds under this section does not vitiate judgment of confirmation, when it appears that the officers of the municipality acknowledged service of the petition and answered the petition under oath in its true corporate name, and the judgment of validation also sets forth the proper corporate name of the municipality. Rhodes v. City of Louisville, 121 Ga. 551, 49 S.E. 681 (1904) (see O.C.G.A. § 36-82-21).

Omission of statement of principal and interest from petition. — When the petition under this section omitted to state how much principal and interest was to be paid annually and when the bonds were to be paid in full, but no objection was made in that proceeding to the sufficiency of the petition, and attached to the answer of the city as an exhibit was a copy of the ordinance providing for the issuance of the bonds, which showed the facts referred to above, so that it appeared from the record that provision on that subject was made, after judgment of validation the omission of the allegation above mentioned from the petition of the solicitor general (now district attorney) will not serve to render the entire proceeding void, or to authorize an injunction to prevent the payment of the bonds. Thomas v. City of Blakely, 141 Ga. 488, 81 S.E. 218 (1914) (see O.C.G.A. § 36-82-21).

Issuance of order prior to filing petition. — Provisions of this section are satisfied if the notice is served and the petition is filed and the order nisi obtained within the several times specified, notwithstanding the issuance of the order nisi may have preceded the filing of the petition in the office of the clerk of the superior court. Durrence v. City of Statesboro, 147 Ga. 175, 93 S.E. 88 (1917) (see O.C.G.A. § 36-82-21).

Validation within jurisdiction of superior court. — Proceeding to validate bonds pursuant to this section embraces justiciable questions within the jurisdiction of the superior court. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456 (1968) (see O.C.G.A. § 36-82-21).

Venue in county in which bonds are situated. — Venue of a statutory proceeding under this section to validate municipal bonds is in the county in which the bonds are situated. Ray v. City of Lavonia, 141 Ga. 626, 81 S.E. 884 (1914); Murray v. City of Tifton, 143 Ga. 301, 84 S.E. 967 (1915) (see O.C.G.A. § 36-82-21).

Fixing of hearing in another county of circuit. — Under the provision of this section, touching the validation of bonds, that, on due application, the judge of the superior court shall require the proper officers to show cause, "at such time and place ... as the judge of said court may direct, why said bonds should not be confirmed and validated," it was held that the fixing, by the judge, of the place for the hearing in another county of the judicial circuit than that where the election was held was not beyond the terms of the Act. Farmer v. Mayor of Thomson, 133 Ga. 94, 65 S.E. 180 (1909) (see O.C.G.A. § 36-82-21).

Hearing on day not named in notice. — When, prior to the hearing of a proceeding for the validation of county bonds under the provisions of this section the required statutory publication giving notice of the date of hearing has been duly made, the fact that the hearing was had before the judge on a day other than that named in the published notice does not

render the judgment illegal, when it further appears that the case was regularly continued by the court from the day named in the publication to the day on which the hearing was had. Wimberly v. County of Twiggs, 116 Ga. 50, 42 S.E. 478 (1902); Moody v. Board of Comm'rs, 29 Ga. App. 21, 113 S.E. 103 (1922) (see O.C.G.A. § 36-82-21).

By whom notice given. — Petition was not subject to demurrer (now motion to dismiss) because the notice to the solicitor general (now district attorney) was not given by the proper officer. This notice must be given by the officer or officers charged with declaring the result of the election. Stephens v. School Dist. No. 3, 154 Ga. 275, 114 S.E. 197 (1922).

Burden of proof in action to validate bonds. — It was incumbent upon the petitioner in an action to validate bonds to make out a prima facie case by proving each of the substantial and material allegations set forth in former Civil Code 1910, §§ 445 and 446 (see O.C.G.A. §§ 36-82-20 and 36-82-21) as necessary allegations of the petition. When this was done the burden was cast upon the defendant, or upon a proper party as intervenor, to set up and establish any other fact which by aliunde proof would render the bond election invalid. King v. County Bd. of Educ., 42 Ga. App. 563, 156 S.E. 710 (1931), aff'd by operation of law, 174 Ga. 685, 164 S.E. 52 (1932).

Burden is on state to prove material facts which are requisite to obtain validation. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456 (1968).

When unqualified trustees act as de facto officers. — When a school district is divided by the board of education of the county by proper resolution, and no new trustees are elected or qualified for that district from which another district is created, but the trustees of the original district continue to act therefor, and call an election for the purpose of determining whether bonds will be issued for the purpose of building and equipping a schoolhouse, and the election results in favor of the bonds, and the trustees give the proper notice to the solicitor (now district attorney), the trustees are acting in the matter as de facto officers and the trustees' acts cannot be attacked as null and void in the proceeding to validate the bonds. Hardrick v. State, 53 Ga. App. 299, 185 S.E. 577 (1936).

Cited in King v. County Bd. of Educ., 174 Ga. 685, 164 S.E. 52 (1932); Lilly v. Crisp County Sch. Sys., 224 Ga. 45, 159 S.E.2d 707 (1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 355 et seq.

36-82-22. Notice of superior court hearing on show cause order.

Prior to the hearing provided for in Code Section 36-82-21, the clerk of the superior court of the county in which the hearing is to be held shall publish in a newspaper, once during each of the two successive weeks immediately preceding the week in which the hearing is to be held, a notice to the public that on the day specified in the order providing for the hearing the same will be heard. Such newspaper shall be the official organ of the county in which the sheriff's advertisements appear. (Ga. L. 1897, p. 82, § 6; Civil Code 1910, § 450; Code 1933, § 87-303; Ga. L. 1966, p. 76, § 1.)

JUDICIAL DECISIONS

Object of publication is to inform citizens, whose interests are to be affected, of the time when the case is set to be heard. Wimberly v. County of Twiggs, 116 Ga. 50, 42 S.E. 478 (1902).

Substantial compliance with notice sufficient. — Substantial compliance with the provision as to notice is sufficient, and when notice specified "Town of Louisville" instead of City of Louisville this was sufficient. Rhodes v. City of Louisville, 121 Ga. 551, 49 S.E. 681 (1904).

By what clerk notice published. — Injunction will not be granted when notice is published by the clerk of the court where the municipality is situated, on the ground that the clerk of another county where order nisi was made returnable should have published the notice. Farmer v. Mayor of Thomson, 133 Ga. 94, 65 S.E. 180 (1909).

Effect of continuance. — When it appears that the case was regularly continued by the court from the day named in the publication to the day on which the hearing was had, the fact that the hearing was on a day other than that named in the publication does not make the judgment illegal. Wimberly v. County of Twiggs, 116 Ga. 50, 42 S.E. 478 (1902); Oliver v. City of Elberton, 124 Ga. 64, 52 S.E. 15 (1905); Crawley v. State, 150 Ga. 86, 102 S.E. 898 (1920).

This section does not require teste. Lilly v. Crisp County Sch. Sys., 117 Ga. App. 868, 162 S.E.2d 456 (1968) (see O.C.G.A. § 36-82-21).

Proper date to present objection to validation. — When a judge fixed a certain date as the day for the hearing on the question of validating a proposed bond issue, and for providential reasons failed to hold court on that day but recessed it until four days later, and upon calling the case on this date a qualified objector presented an objection, it was error to refuse to allow such otherwise qualified objector to present such objections merely because the objector had not presented the objections on the date originally fixed for the hearing. Horton v. Downs Consol. Sch. Dist., 59 Ga. App. 77, 200 S.E. 469 (1938) (decided under former Code 1933, § 87-302).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 357.

ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

36-82-23. Hearing and judgment on show cause order; parties to proceedings; appeal.

Within the time prescribed in the order or such further time as he may fix, the judge of the superior court shall proceed to hear and determine all questions of law and of fact in the case and shall render judgment thereon. Any citizen of this state who is a resident of the county, municipality, or political subdivision desiring to issue the bonds may become a party to the proceedings at or before the time set for the hearing. Any party to the proceedings who is dissatisfied with the judgment of the court confirming and validating the issuance of the bonds or refusing to confirm and validate the issuance of the bonds may appeal from the judgment under the procedure provided by law in cases of injunction. No appeal may be taken by any person who was not a party at the time the judgment appealed from was rendered. (Ga. L. 1897, p. 82, § 3; Civil Code 1910, § 447; Code 1933, § 87-304; Ga. L.

1946, p. 726, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 279, § 4; Ga. L. 1966, p. 76, § 2.)

Law reviews. — For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

JUDICIAL DECISIONS

Court can determine validity of votes. — In a proceeding to validate bonds, it is within the power and jurisdiction of the superior court, upon proper pleadings and sufficient evidence, to pass upon the validity of any votes cast in the election, and to eliminate such votes as are shown by the pleadings and the evidence to be illegal. Turk v. Royal, 34 Ga. App. 717, 131 S.E. 119 (1925).

Generally there can be but one action to validate either certificates or bonds; in either case all interventions would be heard in the validation proceedings, and the allegation that a declaratory judgment is necessary to avoid a multiplicity of actions is a conclusion of the pleader, contrary to the statutory provisions pertaining to validation of revenue anticipation certificates or bonds. Liner v. City of Rossville, 212 Ga. 664, 94 S.E.2d 862 (1956).

Burden on state to prove material facts. — When statutory proceedings were brought for the purpose of validating bonds under former Civil Code 1910, §§ 446 and 447 (see O.C.G.A. §§ 36-82-21 and 36-82-23), and were contested by citizens who became parties thereto and deny the truth of the substantial allegations of the petition, the burden was on the state to prove the material facts which were requisite to obtain validation. Harrell v. Town of Whigham, 141 Ga. 322, 80 S.E. 1010 (1914); Stephens v. School Dist. No. 3, 154 Ga. 275, 114 S.E. 197 (1922); Moody v. Board of Comm'rs, 29 Ga. App. 21, 113 S.E. 103 (1922); Clay v. Austell Sch. Dist., 35 Ga. App. 109, 132 S.E. 127 (1926).

Burden of proof on state even when solicitor general (now district attorney) alleges facts sufficient to warrant validation of bonds and answers filed by defendant admits facts alleged. Harrell v. Town of Whigham, 141 Ga. 322, 80 S.E. 1010 (1914); Jennings v. New Bronwood Sch. Dist., 156 Ga. 15, 118 S.E. 560 (1923).

Final judgment prerequisite to bill of exceptions. — When an answer filed by intervenors is dismissed as being insufficient to prevent validation, but the order of dismissal provides merely that the petitioners "may take an order confirming and validating," it does not constitute a final judgment confirming and validating the issuance of the bonds from which a bill of exceptions will lie as provided by this section. Veal v. Deepstep Consol. Sch. Dist., 34 Ga. App. 67, 128 S.E. 223 (1925) (see O.C.G.A. § 36-82-23).

Proper date to present objection to validation. — When a judge fixed a certain date as the day for the hearing on the question of validating a proposed bond issue, and for providential reasons failed to hold court on that day but recessed the court until four days later, and upon calling the case on this date a qualified objector presented an objection, it was error to refuse to allow such otherwise qualified objector to present the objections merely because the objector had not presented the objection on the date originally fixed for the hearing. Horton v. Downs Consol. Sch. Dist., 59 Ga. App. 77, 200 S.E. 469 (1938).

Petition that judgment be reopened. — When, upon a petition duly filed praying for the validation of certain county bonds, all the proceedings appeared on their face to have been regular, including the notice provided for by law, and the court rendered a judgment validating the bonds, and, 16 days thereafter and after the court had adjourned, certain persons filed a petition merely alleging that the people were taxpayers and asking that the order validating the bonds be vacated or reopened, and that the people

be heard on the question as to the regularity or irregularity of the election held to authorize the bonds, the court did not err in dismissing the petition, on the ground that it came too late. Ballard v. Morgan County, 24 Ga. App. 371, 100 S.E. 763 (1919).

Injunction refused when writ of error not timely. — After the validation of certain municipal bonds, no writ of error to the judgment validating the bonds having been sued out within the time prescribed by law, it was not error for the court below to refuse to enjoin the issuance of those bonds. Holton v. City of Camilla, 134 Ga. 560, 68 S.E. 472 (1910); Edwards v. Town of Guyton, 140 Ga. 553, 79 S.E. 195 (1913).

Assigning error as to amount. — Intervenors cannot for the first time, in their bill of exceptions, successfully assign error to the judgment on the ground that it did not affirmatively appear that the proposed bond issue was within the constitutional limitation of amount. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577 (1916).

Judgment conforms to pleading when judgment contains same recitals. — Judgment validating bonds conformed to the pleadings upon which based, when the judgment contained the same recitals as pleadings as to character and amount of bonds raised. Sewell v. City of Tallapoosa, 145 Ga. 19, 88 S.E. 577 (1916).

Sufficiency of allegations of fraud. — When it does not appear that the county attorney made any misrepresentation as to any fact or facts concerning the hearing, or the postponement thereof, or waived the filing of any objections, or promised to continue the hearing, and it appearing from the petition that the petitioners knew of the time legally set for the validation proceeding, and the only conclusion to be drawn being that through their laches and negligence the petitioners failed to file objections, the petition does not allege facts sufficient to show such fraud as would warrant the setting aside of the judgment. Swicord v. Grady County, 24 Ga. App. 522, 101 S.E. 395 (1919).

Intervention procedure not required. — O.C.G.A. § 36-82-23 does not provide for intervention by third parties; thus, becoming a party does not require mandatory compliance with the procedure of O.C.G.A. § 9-11-24. Hay v. Development Auth., 239 Ga. App. 803, 521 S.E.2d 912 (1999), appeal dismissed sub nom. Hay v. Newton County, 246 Ga. App. 44, 538 S.E.2d 181 (2000).

Cited in Gibbs v. Ty Ty Consol. Sch. Dist., 168 Ga. 379, 147 S.E. 764 (1929); Chappell v. Small, 194 Ga. 143, 20 S.E.2d 916 (1942); Dade County v. State, 201 Ga. 241, 39 S.E.2d 473 (1946).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 369, 372.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2173 et seq.

ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

36-82-24. Effect of judgment of validation.

In the event that no appeal is filed within the time prescribed by law or, if an appeal is filed, that the judgment is affirmed on appeal, the judgment of the superior court confirming and validating the issuance of the bonds shall be forever conclusive upon the validity of the bonds against the county, municipality, or political subdivision. (Ga. L. 1897, p. 82, § 4; Civil Code 1910, § 448; Code 1933, § 87-305; Ga. L. 1966, p. 76, § 3.)

JUDICIAL DECISIONS

Illegal use of funds does not relieve liability. — Fact that funds derived from sale of school bonds may have been improperly used by trustees does not relieve taxpayers from liability to innocent bondholders. Page v. Sansom, 184 Ga. 623, 192 S.E. 203 (1937).

When bonds had been duly validated, and he defendants failed to intervene in proceeding to validate bonds, the defendant's could not be heard to attack the validity of act under which bonds were issued on the ground that the act was unconstitutional. Gowran v. Wood, 171 Ga. 433, 156 S.E. 21 (1930).

Cited in Rountree v. Rentz, 119 Ga. 885, 47 S.E. 328 (1904); Baker v. City of Cartersville, 127 Ga. 221, 56 S.E. 249 (1906); Edwards v. Town of Guyton, 140 Ga. 553, 79 S.E. 195 (1913); Whiddon v. Fletcher, 150 Ga. 39, 102 S.E. 350 (1920); Dumas v. Rigdon, 151 Ga. 267, 106 S.E. 261 (1921); Towns v. Workmore Pub. Sch. Dist., 166 Ga. 393, 142 S.E. 877 (1928); Gibbs v. City of Social Circle, 191 Ga. 422, 12 S.E.2d 335 (1940).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 373 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2173.

ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax, 68 ALR2d 1041.

36-82-25. Entry of reference to judgment of validation on bonds; use of entry as evidence.

Bonds issued under this part shall have stamped or written thereon, by the proper officers of the county, municipality, or political subdivision issuing the bonds or their agents or servants, the words "Validated and confirmed by judgment of the superior court," along with the date when the judgment was rendered and the court in which it was rendered, which entry shall be signed by the clerk of the superior court in which the judgment was rendered. Such entry shall be original evidence of the fact of such judgment and shall be received as original evidence in any court in this state. (Ga. L. 1897, p. 82, § 5; Civil Code 1910, § 449; Code 1933, § 87-306.)

JUDICIAL DECISIONS

Statutes do not require any particular form or any specific statement in bonds issued by any county. Touchton v. Echols County, 211 Ga. 85, 84 S.E.2d 81 (1954).

No mandamus to certify instrument not in conformity. — It is the duty of the clerk of the superior court to sign a validation certificate and attach the seal of the clerk's office to all county bonds regularly validated. The law contemplates, however, that a certification by the clerk shall speak the truth, and the clerk may not be required by a mandamus, or otherwise, to certify an instrument that does not conform to the records in the clerk's office. Touchton v. Echols County, 211 Ga. 85, 84 S.E.2d 81 (1954).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2168.

36-82-26. Payment of costs of judicial validation proceedings.

The costs of the proceedings shall be paid in any event by the county, municipality, or political subdivision desiring to issue the bonds. (Ga. L. 1897, p. 82, § 7; Civil Code 1910, § 451; Code 1933, § 87-307.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 376.

36-82-27. Procedure upon failure of district attorney or Attorney General to file petition with superior court generally.

When any county, municipality, or political subdivision of the state has held an election for the issuance of bonds and notice has been duly served on the district attorney or the Attorney General under authority of such county, municipality, or other political subdivision, for the purpose of securing a judicial validation of such bonds, but the district attorney or Attorney General has failed to proceed within the time specified by Code Section 36-82-21, it shall be competent for the county, municipality, or other political subdivision to represent such facts in writing to the court, and to represent further that the failure has been without fault on the part of the county, municipality, or other political subdivision. In such case it shall be the duty of the court and it shall have the power and authority to inquire into the facts and, upon being satisfied that the failure has not arisen from any fault or neglect on the part of the county, municipality, or other political subdivision, to issue an order authorizing and directing the district attorney or the Attorney General to proceed within ten days to file the petition authorized by Code Section 36-82-21. Thereafter, the proceedings shall be heard in the same manner as would have been followed had the petition been duly and promptly filed in the first instance. (Ga. L. 1920, p. 110, § 1; Code 1933, § 87-308.)

36-82-28. Effect of judgment of validation upon failure to file petition.

Where proceedings are had as provided in Code Section 36-82-27 and result in a judgment validating the bonds, the bonds shall be held and deemed to be as fully and completely validated to all intents and

purposes as though the proceedings had been had originally as provided by law and the judgment of validation shall be finally and completely conclusive in like manner as is now provided by Code Section 36-82-25. (Ga. L. 1920, p. 110, § 2; Code 1933, § 87-309.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 373 et seq.

ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

Part 2

Validation by Holder of Bonds Issued by Counties or Municipalities Subsequent to Adoption of Constitution of 1877

RESEARCH REFERENCES

ALR. — Estoppel of municipal corporation or other political subdivision by recitals in its bonds to dispute their validity as affected by the character of the owner of bonds as an original holder or a transferee, 86 ALR 1129.

36-82-40. Authorization and procedure generally.

The holder of any outstanding bond or bonds of any county, municipality, or political subdivision in this state issued subsequently to the adoption of the Constitution of 1877, the validating of which is not otherwise provided for by Code Sections 36-82-1 through 36-82-6 and Part 1 of this article, shall have the right to have the same validated in the manner provided in this part. (Ga. L. 1908, p. 72, § 1; Civil Code 1910, § 453; Code 1933, § 87-401.)

Law reviews. — For article discussing the impact on bond issues of challenges to voting procedures, see 15 Ga. St. B.J. 15 (1978).

RESEARCH REFERENCES

ALR. — Validity, within authorized debt, tax, or voted limit, of bond issue in excess of amount permitted by law, 175 ALR 823.

36-82-41. Furnishing of indemnity bond by holder.

The holder of any bond or bonds described in Code Section 36-82-40 who desires to have the same validated shall first enter into an obligation with sufficient security to indemnify the county, municipality, or political subdivision issuing the bond or bonds desired to be validated against all court costs and other expenses incident to the validating proceedings, the sufficiency of the surety on such obligation

to be approved by the executive officer or officers of the county, municipality, or political subdivision. (Ga. L. 1908, p. 72, § 2; Civil Code 1910, § 454; Code 1933, § 87-402.)

36-82-42. Petition by holder to district attorney or Attorney General.

The holder of any bond or bonds described in Code Sections 36-82-40 and 36-82-41, having given indemnity against cost, may present to the district attorney of the circuit in which the county, municipality, or political subdivision which issued such bond or bonds is located or to the Attorney General in the event the district attorney is absent from the circuit, a petition setting forth a description of the bond or bonds sought to be validated, stating the date of issue, the rate of interest, the number and denomination of all bonds issued, and the time and place for payment of principal and interest, with a full copy of all resolutions and other proceedings authorizing the issue of the bonds, and indicating any and all other facts showing the authority of the county, municipality, or political subdivision to issue such bonds and the purpose for which they were issued. (Ga. L. 1908, p. 72, § 3; Civil Code 1910, § 455; Code 1933, § 87-403.)

36-82-43. Petition by district attorney or Attorney General to superior court; order to show cause; service of petition and order; answer.

Within 20 days from the date on which the petition of the holder of any bond or bonds is presented to the district attorney or to the Attorney General such officer shall prepare and file, in the office of the clerk of the superior court of the county which issued the bonds or in the county in which the municipality or political subdivision which issued the bonds is located, a petition directed to the superior court of the county, in the name of the state and against the county, municipality, or political subdivision issuing the bonds, setting forth all the facts stated in the petition presented to him as provided in Code Section 36-82-42, the name of the county, municipality, or political subdivision which issued the bonds, the amount of bonds issued, for what purpose they were issued, a full description of the bonds, the authority under which they were issued, and the number of outstanding bonds. He shall obtain from the judge of the superior court of the county an order requiring the county, municipality, or political subdivision to show cause, by the proper officer or officers, at such time and place within 20 days from the filing of the petition as the judge of the court may direct, why the bonds described in the petition should not be confirmed and validated. The petition and order shall be served in the manner provided by law for the service of petitions upon counties, municipalities, or political subdivi-

sions. The officer or officers of the county, municipality, or political subdivision shall make sworn answer to the petition within the time prescribed. (Ga. L. 1908, p. 72, § 4; Civil Code 1910, § 456; Code 1933, § 87-404.)

JUDICIAL DECISIONS

When place of hearing fixed in another county, judgment a nullity. — When the judge of the superior court of the county in which the bonds were to be issued, upon a petition filed by the solicitor general (now district attorney) fixed the place of hearing at a point in another county, giving notice of the time and place of hearing, the court was without jurisdiction to pass judgment validating the bonds, and a judgment validating the bonds was a mere nullity. Tyson v. McIntosh County, 147 Ga. 233, 93 S.E. 407 (1917).

Affidavit by one member of board of education sufficient for petition. — When a petition to validate bonds to be issued by a county board of education is filed by the solicitor general (now district attorney), it is not necessary that the answer to such petition by the board of education, required by this section, be sworn to by each member of the board, but the affidavit of one member of the board is sufficient. King v. County Bd. of Educ., 42 Ga. App. 563, 156 S.E. 710 (1931), aff'd by operation of law, 174 Ga. 685, 164 S.E. 52 (1932) (see O.C.G.A. § 36-82-43).

Cited in King v. County Bd. of Educ., 174 Ga. 685, 164 S.E. 52 (1932).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 358, 360, 379, 380.

36-82-44. Hearing and judgment; parties to proceedings; appeal.

Within the time prescribed in the order or such further time as he may fix, the judge of the superior court shall proceed to hear and determine all questions of law and fact in the case and shall render judgment thereon. Any citizen of this state who is resident in the county, municipality, or political subdivision desiring to issue the bonds may become a party to the proceedings at or before the time set for the hearing. Any party thereto who is dissatisfied with the judgment of the court confirming and validating the issuance of the bonds or refusing to confirm and validate the issuance of the bonds may appeal from the judgment under the procedure provided by law in cases of injunction. Only a party to the proceedings at the time the judgment appealed from is rendered may appeal from the judgment. (Ga. L. 1908, p. 72, § 5; Civil Code 1910, § 457; Code 1933, § 87-405; Ga. L. 1946, p. 726, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 279, § 5; Ga. L. 1966, p. 76, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 366 et seq.
ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

36-82-45. Effect of judgment of validation.

If no appeal is filed within the time prescribed by law or if an appeal is filed and the judgment is affirmed on appeal, the judgment of the superior court confirming and validating the bonds shall be forever conclusive upon the validity of the bonds against the county, municipality, or political subdivision. (Ga. L. 1908, p. 72, § 6; Civil Code 1910, § 458; Code 1933, § 87-406; Ga. L. 1966, p. 76, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 373 et seq.
ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

36-82-46. Applicability of Code Sections 36-82-22 and 36-82-25.

Code Sections 36-82-22 and 36-82-25, providing for a notice of proceeding to validate and proof of validation, are made applicable in all proceedings to validate bonds under Code Sections 36-82-40 through 36-82-45. (Ga. L. 1908, p. 72, § 7; Civil Code 1910, § 459; Code 1933, § 87-407.)

RESEARCH REFERENCES

ALR. — Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 ALR 1310.

36-82-47. Payment of costs of proceedings.

All the costs of the proceedings shall be paid by the holder or holders requesting the validation of the bonds. (Ga. L. 1908, p. 72, § 8; Civil Code 1910, § 460; Code 1933, § 87-408.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 376.

ARTICLE 3

REVENUE BONDS

Cross references. — Constitutional provisions, Ga. Const. 1983, Art. IX, Sec. VI.

Law reviews. — For article discussing extraterritorial provision of utility services by municipality, see 12 Ga. L. Rev. 1 (1977).

JUDICIAL DECISIONS

Analysis

General Consideration
Contracts
Specific Projects
Procedure

General Consideration

Courts bound by constitutional provision. — Under Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I), the grant of such broad powers to municipalities as are contained in the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) is authorized, and by that the courts are bound and have nothing to do with the reasonableness, wisdom, policy, or expediency of the law. Lipscomb v. Cumming, 211 Ga. 55, 84 S.E.2d 3 (1954).

Issuance of bonds not unconstitutional. — When it appeared that revenue anticipation bonds were to be issued by a town for improvement of waterworks under the authority and in accordance with the method prescribed by Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I), and the laws incorporated therein by reference thereto, the proposed issuance of the revenue anticipation bonds, the proceeding for validation, and the judgment of validation were not contrary to any provisions of the Constitution. Thigpen v. Town of Davisboro, 81 Ga. App. 610, 59 S.E.2d 522 (1950).

Acts restricting rights granted under article inoperative. — Since the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), adopted in Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I), is a part of the charter of every municipality, any acts of the General Assembly tending to restrict the power of a municipality to exercise rights granted thereunder are inoperative for this purpose. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955).

Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) sets out general law by which counties, municipalities, and other political subdivisions may raise revenue for projects contemplated. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955).

Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) does not purport to be general law exhaustive of purposes for which revenue bonds or certificates may be issued and this is not violative of the Constitutional provision that laws of a general nature shall have uniform operation throughout the state, and no special law shall be enacted in any case for which provisions have been made by an existing general law (Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I)). Sigman v. Brunswick Port Auth., 214 Ga. 332, 104 S.E.2d 467 (1958).

Effect of contradictory local legislation. — General Assembly intended that every municipality should have exactly the same power to do all of the acts authorized by the Revenue Bond Law of 1937 (O.C.G.A. Art. 3, Ch. 82, T. 36) as adopted by Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I), and the constitutional provisions being a part of the charter of a municipality, it necessarily follows that it has the authority to proceed thereunder regardless of other and alternate, or even

General Consideration (Cont'd)

contradictory, plans which might have been contained in local legislation. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955).

Article is part of municipal charter. — When the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) and the Constitution of 1945 were adopted, the provisions of each as to revenue bonds became a part of the charter of every municipality. Lipscomb v. Cumming, 211 Ga. 55, 84 S.E.2d 3 (1954); Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955).

Certificates not debts within constitutional limitations. — Revenue anticipation bonds issued under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) do not subject the political subdivision issuing the bonds to any pecuniary liability thereon and are, therefore, not debts against such political subdivision within the meaning of the constitutional provision limiting such indebtedness (Ga. Const. 1976, Art. IX, Sec. VII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I)). Fort Oglethorpe v. Catoosa County, 80 Ga. App. 188, 55 S.E.2d 753 (1949).

Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) is designed to provide for self-liquidating projects and revenue bonds therein contemplated are not to be a charge against the general credit of the county or municipality. The liability is to be satisfied only from revenues produced by the undertaking and, under the specific terms of the statute, the political division will never be required to aid in its retirement with funds derived from any other source, and is in fact prohibited from doing so. Reed v. City of Smyrna, 201 Ga. 228, 39 S.E.2d 668 (1946).

Origin of funds as affecting public or private status. — Fact that the funds proposed to be used are to be derived from the sale of revenue anticipation bonds does not deprive the funds of the character of "public funds," use of which for private purpose or enterprise is prohibited. Beazley v. De Kalb County, 210 Ga. 41, 77 S.E.2d 740 (1953).

Cited in Dade County v. State, 201 Ga. 241, 39 S.E.2d 473 (1946); Findley v. City of Vidalia, 78 Ga. App. 581, 51 S.E.2d 542 (1949); McLucas v. State Bridge Bldg. Auth., 210 Ga. 1, 77 S.E.2d 531 (1953); Messenheimer v. Windt, 211 Ga. 575, 87 S.E.2d 402 (1955); Carter v. State, 211 Ga. 824, 89 S.E.2d 175 (1955); Merritt v. State, 95 Ga. App. 612, 98 S.E.2d 242 (1957); Southern Airways Co. v. De Kalb County, 216 Ga. 358, 116 S.E.2d 602 (1960); Smith v. Hayes, 217 Ga. 94, 121 S.E.2d 113 (1961); Couch v. City of Villa Rica, 203 F. Supp. 897 (N.D. Ga. 1962); Mays v. State, 110 Ga. App. 881, 140 S.E.2d 223 (1965); Rich v. State, 237 Ga. 291, 227 S.E.2d 761 (1976); Krause v. City of Brunswick, 242 Ga. 659, 251 S.E.2d 239 (1978); Reed v. State, 265 Ga. 458, 458 S.E.2d 113 (1995).

Contracts

Provisions of the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) did not render meaningless the mandate of former Code 1933, § 69-202 (see O.C.G.A. § 36-30-3), forbidding councils from binding their successors. The express statutory authority for a municipality to contract with the bondholders as to specified future utility rates did not extend to contracts with the wholesaler of electrical power. Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651 (1962).

Covenants against disposing of undertaking enforceable. — Covenants against leasing or otherwise disposing of an undertaking, revenues of which were pledged in accordance with the contract between a governing authority and its bondholders under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), constitute a contract between such governing body and each bondholder which was enforceable by the latter under the provisions of Ga. L. 1937, p. 761, § 6 (see O.C.G.A. § 36-82-65). Hicks v. State, 99 Ga. App. 302, 108 S.E.2d 187 (1959).

Specific Projects

Creation of water district and system outside city approved. — Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) defines a "municipality" (now "governmental body") to be any county, city, or town. It authorizes any such municipality to create a water district and to construct, operate, and maintain a water system

which may be located wholly within or wholly without the municipality, or partially within and partially without the municipality. City of Trenton v. Dade County, 75 Ga. App. 326, 43 S.E.2d 432 (1947).

No cause of action to enjoin city from furnishing water outside city limits. — Petition which seeks to enjoin city from constructing a water line and furnishing water to customers because the customers are located outside the corporate limits of the city fails to state a cause of action. Lipscomb v. Cumming, 211 Ga. 55, 84 S.E.2d 3 (1954).

Bonds issued to extend existing system of improvements approved. — Under the provisions of the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) and the constitutional sanction thereof (Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I)), revenue anticipation bonds may be issued by a municipality to extend an existing system of municipal improvements by pledging the entire revenue of the whole system to the payment thereof, subject to the rights of holders of prior issues, without prorating the values of the existing and the new facilities, and pledging only the revenue of such new facilities according to their proportion to the total value. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955).

Government center and retardation center bonds confirmed and validated. See Building Auth. v. State, 253 Ga. 242, 321 S.E.2d 97 (1984).

Issuing certificates for construction of warehouse not authorized. — Under the restrictive provisions of Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I), that governmental subdivisions of the state shall issue revenue anticipation bonds only to provide funds for such facilities and undertakings as are "specifically authorized and enumerated" by Acts there referred to, a county is not authorized to issue such revenue bonds for the acquisition or construction and equipping of warehouses to be used in the conduct of a general storage warehouse business, which is ordinarily carried on by private enterprise. Such an undertaking is not properly included within the definition of the word "terminal" as used in the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), and not "specifically authorized and enumerated" therein. Beazley v. De Kalb County, 210 Ga. 41, 77 S.E.2d 740 (1953).

Contract with engineering company not payable from general funds. — Liability against a municipality arising out of and by virtue of any contract made by such municipality with an engineering company, entered into pursuant to the provisions of Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I), and the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), is not an indebtedness of the municipality which can be paid and satisfied out of the general tax fund or other general funds of the municipality. City of Royston v. Littrell Eng'r Co., 87 Ga. App. 903, 75 S.E.2d 678 (1953).

Procedure

Superior rights not gained by prior proceeding to validate certificates. — There is nothing contained in the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) which expressly or by necessary implication gives that municipality which institutes proceedings first for the validation of its bonds, and the confirmation of the security for the payment thereof, superior rights over another municipality which may file proceedings to validate and confirm the security for its bonds subsequently thereto; this is true although the two proposed districts may embrace the same area or portions of the same area. City of Trenton v. Dade County, 75 Ga. App. 326, 43 S.E.2d 432 (1947).

Conclusiveness of judgment validating revenue bonds. — Judgment validating revenue bonds, unless excepted to within the time provided by law, is conclusive upon all questions made, or that might have been made, prior to the judgment of validation, including the constitutionality of the statute under which the proceedings are had. Dawson v. Hospital Auth., 212 Ga. 146, 91 S.E.2d 12 (1956).

Defect in service waived by appearance. — When the mayor and counsel of a municipality appear, file an answer, and

Procedure (Cont'd)

acknowledge service of a petition for validating revenue bonds, any defect in the service of the petition on the mayor and counsel is held to be waived by appearance and pleading. Dade County v. State, 75 Ga. App. 330, 43 S.E.2d 434 (1947).

Written notice by attorney on solicitor general (now district attorney) sufficient. — When a municipality through the municipality's proper officers, under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), employs an attorney to guide and direct the municipality generally and to prepare proceedings for the purpose of validating revenue bonds, and such attorney prepares the resolution of the municipality and serves written notice of the passage of the resolution on the solicitor general (now district attorney), such will be deemed sufficient notice to the solicitor general (now district attorney). Dade County v. State, 75 Ga. App. 330, 43 S.E.2d 434 (1947).

OPINIONS OF THE ATTORNEY GENERAL

Eminent domain beyond corporate city limits. — Georgia municipalities have power of eminent domain, even beyond corporate city limits, for public works financed by revenue bonds. 1981 Op. Att'y Gen. No. U81-1.

Municipalities in business only to serve public welfare. — In the absence of special circumstances, it is not within the constitutional power of a legislature to authorize a municipal corporation (county) to engage in a business which can be and ordinarily is carried on by private enterprise, merely for the purpose of obtaining an income or deriving a profit therefrom, but it should be allowed to go into business only on the theory that thereby the public welfare will be subserved. 1965-66 Op. Att'y Gen. No. 66-176.

County cannot make donations to water and sewerage authority, but it can enter into contracts with such authority. 1970 Op. Att'y Gen. No. U70-225.

Athletic facilities approved. — Under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), the county board of education could erect athletic fields, grandstands, and stadiums with revenue bonds to be retired solely from the usage of the fields, grandstands, and stadiums. 1945-47 Op. Att'y Gen. p. 168.

Ambulance service. — County has no right, in absence of special or local legislation granting such right, to operate ambulance service. 1965-66 Op. Att'y Gen. No. 66-176.

Weight of advice of county attorney. — Before a county board of education should undertake to create a debt under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), the county board of education should advise with the county attorney and be governed according to the county attorney's advice and instruction. 1945-47 Op. Att'y Gen. p. 168.

36-82-60. Short title.

This article may be cited as the "Revenue Bond Law." (Ga. L. 1937, p. 761, § 1; Ga. L. 1957, p. 36, § 1.)

Law reviews. — For article discussing the impact on bond issues of challenges to voting procedures, see 15 Ga. St. B.J. 15 (1978).

JUDICIAL DECISIONS

Constitutionality. — As applied to the establishment and maintenance of systems of waterworks by counties, the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) is not subject to attack on the ground that the law violates the constitutional

provision that protection to person and property is the paramount duty of government, and shall be impartial and complete. Nor does the Constitution otherwise prohibit the General Assembly from authorizing such an undertaking by counties. The court did not err in denying an interlocutory injunction. Miller v. Head, 186 Ga. 694, 198 S.E. 680 (1938).

See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Certificates not to be charged against general credit. — Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) is designed to provide for self-liquidating projects and the revenue bonds therein contemplated are not to be a charge against the general credit of the county or municipality. The liability is to be satisfied only from revenues produced by the undertaking and under the specific terms of the statute, the political division will never be required to aid in its retirement with funds derived from any other source, and is in fact prohibited from doing so. The article is not unconstitutional by virtue of violating the constitutional limitation on municipal debts in Ga. Const. 1976, Art. IX, Sec. VII, Para. I (see Ga. Const. 1983, Art. IX, Sec. V, Para. I). Miller v. Head, 186 Ga. 694, 198 S.E. 680 (1938).

Superior rights not gained by prior proceeding to validate certificates. — There is nothing contained in the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) which expressly or by necessary implication gives that municipality which institutes proceedings first for the validation of the municipality's bonds, and the confirmation of the security for the payment thereof, superior rights over another municipality which may file proceedings to validate and conform the security for the municipality's bonds subsequently thereto; this is true although the two proposed districts may embrace the same area or portions of the same area. Dade County v. State, 202 Ga. 191, 42 S.E.2d 439 (1947).

City's proceeding to validate bonds not barred by county filing proceeding to validate bonds for overlapping water district. — When the governing body of a county has fully complied with all the provisions of the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) in the creation of a water district and caused proceedings to be filed for the validation of the county's bonds, the fact that the governing body of a city located wholly within the area embraced in the county's district has likewise fully complied with all the provisions of the law in the creation of a water district comprised only of the area located within its corporate limits, and caused proceedings to be filed to validate and confirm its bonds, does not constitute a legal reason why the city's bonds should not be validated and confirmed. Dade County v. State, 202 Ga. 191, 42 S.E.2d 439 (1947).

Trial court properly dismissed a county resident's preemptive declaratory judgment action challenging the issuance of bonds for a development project on the ground that a bond validation petition under the Georgia Revenue Bond Law, O.C.G.A. § 36-82-60 et seq., in which the resident intervened was the exclusive forum for adjudication of the resident's claims. Courts are not to render declaratory judgments if other statutory remedies have been specifically provided, as was the case here, and the resident's claims were adequately addressed and adjudicated in the validation proceeding. Woodham v. City of Atlanta, 283 Ga. 95, 657 S.E.2d 528 (2008).

Cited in Dade County v. State, 77 Ga. App. 139, 48 S.E.2d 144 (1948); United States v. City of Rossville, 249 F. Supp. 701 (N.D. Ga. 1966); Copeland v. State, 268 Ga. 375, 490 S.E.2d 68 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 13, 74.

36-82-61. Definitions.

As used in this article, the term:

(1) "Governing body" means the board, commission, council, or other local legislative body of a governmental body.

(2)(A) "Governmental body" means any school district, county, or municipal corporation of this state.

(B) The term "governmental body" shall also mean and include highway districts of the state which have been or may hereafter be created as political subdivisions of the state, which shall have the same rights and powers to operate under this article as have counties, municipal corporations, and school districts. Such highway districts as political subdivisions of the state shall be limited, however, in such undertakings to the construction, acquisition, and building of highways, bridges, causeways, approaches, viaducts, tunnels, and all things incidental to the improvement of highways located within their respective districts as created by the Constitution and laws of this state.

(C) The term "governmental body" shall also mean and include state and local public authorities having corporate powers which have been or may hereafter be created by general, local, or special Act of the General Assembly. Such state or local authorities are fully empowered to issue revenue-anticipation certificates and to operate under this article in the same manner and to the same extent as counties or municipal corporations of the state are authorized to do.

(D) For the purposes of Code Sections 36-82-74 through 36-82-82, inclusive, the term "governmental body," in addition to its definitions in subparagraphs (A) through (C) of this paragraph, means a hospital authority the revenue certificates of which are required by Code Section 31-7-81 to be confirmed and validated in accordance with the procedure of this article.

(3) "Revenue" or "revenue of the undertaking" means all revenues, income, and earnings arising out of or in connection with the operation or ownership of the undertaking and, if so stated in the resolution or resolutions authorizing the issuance of obligations under this article, also means moneys received as grants from the United States of America, from this state, or from any instrumentality or agency of the foregoing in aid of such undertaking.

(4) "Undertaking" includes the following revenue-producing undertakings or any combination of two or more of such undertakings, whether now existing or hereafter acquired or constructed:

(A) Causeways, tunnels, viaducts, bridges, and other crossings;

(B) Highways, parkways, airports, docks, piers, wharves, terminals, and other facilities;

(C) Systems, plants, works, instrumentalities, and properties:

(i) Used or useful in connection with the obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses;

(ii) Used or useful in connection with the collection, treatment, and disposal of sewage, waste, and storm water; together with all parts of any such undertaking and all appurtenances thereto, including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connecting and other sewer and water mains, filtration works, pumping stations, and equipment;

(iii) Used or useful in connection with the collection, treatment, reuse, or disposal of solid waste; or

(iv) Used or useful in connection with buying, constructing, extending, operating, and maintaining gas or electric generating and distribution systems together with all necessary appurtenances thereof; provided, further, any revenue certificates issued to buy, construct, extend, operate, and maintain electric generating and distribution systems shall, before being undertaken, be authorized by a majority of those voting at an election held for the purpose in the county, municipal corporation, or political subdivision affected, the election for such to be held in the same manner as is used in issuing bonds of such county, municipal corporation, or political subdivision and the said elections shall be called and provided for by officers in charge of the fiscal affairs of said county, municipal corporation, or political subdivision affected;

(D) Dormitories, laboratories, libraries, and other related facilities;

(E) Parks, golf links and fairways, tennis courts, swimming pools, playgrounds, athletic fields, grandstands and stadiums; buildings to be used for various types of sports, including baseball and football; buildings to be constructed and used for the housing of exhibits for fairs and educational purposes; buildings to be used for the housing of livestock, horses, cattle, swine, poultry, and agricultural exhibits for exhibition purposes; the erection and construction of buildings to be used for amusement purposes or educational purposes or a combination of the two; and such

buildings to be used for fairs, expositions, or exhibitions in connection therewith;

(F) Combinations of sea wall, groin, and beach erosion protection systems;

(G) Public parking areas and public parking buildings;

(H) Purchase of lands used by the United States government as army camps for the training of soldiers during the war, when and if the same is declared surplus by the United States government or its authority, provided that a county shall only be allowed to purchase lands which were within its boundaries at the time such lands were acquired by the United States government or any division of the United States government;

(I) Parking meters on streets, thoroughfares, parkways, and any avenue of traffic, such meters to be located thereon or immediately adjacent thereto for the purpose of providing space for vehicles and authorizing the use of same for parking purposes upon the payment of a charge therefor;

(J) Purchase of existing public common carriers of passengers for hire and facilities necessary, incident, or needful thereto by the use of motor buses, trackless trolleys, electric trolleys, or any other means of transportation of passengers on the streets and highways;

(K) The purchase of land and the construction thereon of facilities for lease to industries, so as to relieve abnormal unemployment conditions; and

(L) Jails and all other structures and facilities which are necessary and convenient for the operation of jails. (Ga. L. 1937, p. 761, § 2; Ga. L. 1939, p. 362, § 1; Ga. L. 1949, p. 973, § 1; Ga. L. 1950, p. 20, § 1; Ga. L. 1950, p. 188, § 1; Ga. L. 1950, p. 422, § 1; Ga. L. 1951, p. 46, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 489, § 1; Ga. L. 1957, p. 410, § 1; Ga. L. 1957, p. 453, § 1; Ga. L. 1973, p. 588, § 1; Ga. L. 1980, p. 709, § 1; Ga. L. 1983, p. 839, § 1; Ga. L. 1984, p. 22, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1995, p. 286, § 1; Ga. L. 2003, p. 862, § 2.)

Law reviews. — For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005) and 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Construction of sewer system is clearly undertaking contemplated under the Revenue Bond Law, O.C.G.A. Art. 3, Ch. 82, T. 36. Kelley v. City of Griffin, 257 Ga. 407, 359 S.E.2d 644 (1987).

Creation of water district and system outside city approved. — Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) defines a "municipality" (now "governmental body") to be any county, city, or town of this state. It authorizes any such municipality to create a water district and to construct, operate, and maintain a water system which may be located wholly without the municipality, or partially within and partially without the municipality. City of Trenton v. Dade County, 75 Ga. App. 326, 43 S.E.2d 432 (1947).

Combining waterworks and sewage systems approved. — Argument that the waterworks system is a proprietary and revenue-producing function, and that the sewage system is a governmental function, and for this reason the two cannot be combined into one system, notwithstanding any authority to do so under this section, is without merit. Under Ga. Const. 1976, Art. IX, Sec. VIII, Para. I, (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I), it is expressly provided that water systems and sewerage systems may be combined. Reed v. City of Smyrna, 201 Ga. 228, 39 S.E.2d 668 (1946) (see O.C.G.A. § 36-82-61).

Word "terminal" as used in the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) means a place provided by or for any type of common carrier, including buildings and structures incidental to their services, such as shelters and enclosures for the comfort and convenience of passengers, or for the care and safety of freight pending shipment or delivery to consignee or to connecting carriers. Beazley v. De Kalb County, 210 Ga. 41, 77 S.E.2d 740 (1953).

County payments to airport authority's sinking fund as "revenue." — Under a contract between county and airport authority for use by the county of an expanded airport facility, although the county's consideration would not be paid directly to the authority, but paid to the custodian of the authority's sinking fund, the consideration did not lose its character as "revenue" for the authority and such payment scheme was not a reason to deny validation of the authority's revenue bonds. Clayton County Airport Auth. v. State, 265 Ga. 24, 453 S.E.2d 8 (1995).

No law makes county commissioners individually the governing body of the county in cases of water systems financed by revenue bonds or certificates. Gwinnett County v. Archer, 102 Ga. App. 813, 118 S.E.2d 97 (1960).

County was proper party plaintiff in suit alleging that former commissioners paid an excessive fee to the commissioners' attorney and improperly delegated to the attorney the authority to settle with and pay other attorneys in connection with establishment of a water system financed by revenue anticipation bonds. Gwinnett County v. Archer, 102 Ga. App. 813, 118 S.E.2d 97 (1960).

Cited in Dade County v. State, 77 Ga. App. 139, 48 S.E.2d 144 (1948); Fort Oglethorpe v. Catoosa County, 80 Ga. App. 188, 55 S.E.2d 753 (1949); Johnston v. Clayton County Water Auth., 222 Ga. 39, 148 S.E.2d 417 (1966); Austin Enters., Inc. v. DeKalb County, 222 Ga. 232, 149 S.E.2d 461 (1966); Hospital Auth. v. Stewart, 226 Ga. 530, 175 S.E.2d 857 (1970); Norton Realty & Loan Co. v. Board of Educ., 129 Ga. App. 668, 200 S.E.2d 461 (1973); City of Jonesboro v. Clayton County Water Auth., 136 Ga. App. 768, 222 S.E.2d 76 (1975); Krause v. City of Brunswick, 242 Ga. 659, 251 S.E.2d 239 (1978); Ware v. Henry County Water & Sewerage Auth., 258 Ga. App. 778, 575 S.E.2d 654 (2002); McLeod v. Columbia County, 278 Ga. 242, 599 S.E.2d 152 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Application of section to buildings constructed for educational purposes. — While counties are authorized to issue revenue bonds in paragraph (2) of this section, and while an "undertaking" is said to include buildings constructed for educational purposes under paragraph (4), both Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I) and this section require that the funds must be for a revenue-producing facility and that the obligations be paid only from revenue produced by this revenue-producing facility.

1954-56 Op. Att'y Gen. p. 222 (see O.C.G.A. § 36-82-61).

Housing for teachers not included. — Since subparagraph (4)(E) contains no general language, despite the fact that reference is made to housing facilities for swine, cattle, etc., it does not include housing for teachers. Cattle, swine, and other domestic animals constitute only one type of personal property belonging to the school which would require housing no different than class room furniture or laboratory supplies and which would be used as an integral part of the educational operation, whereas the home or living quarters of a teacher would not fall in the same category. 1958-59 Op. Att'y Gen. p. 140 (see O.C.G.A. § 36-82-61).

General phrase "other related facilities" in subparagraph (4)(D) cannot be construed to include housing facilities for teachers. The specific subjects, i.e., "dormitories, laboratories, libraries," enumerated prior to the general phrase "other related facilities," all relate to facilities that constitute an integral part of the physical school properties for use by the students and public generally, whereas housing facilities would not be construed as a part of the school plant or for use by the public generally, notwithstanding the incidental public benefit to be derived therefrom in facilitating the employment of desirable teachers. 1958-59 Op. Att'y Gen. p. 140 (see O.C.G.A. § 36-82-61).

County cannot make donations to water and sewerage authority, but the county can enter into contracts with such authority. 1970 Op. Att'y Gen. No. U70-225.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 1, 280. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 13, 74, 86 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 1 et seq., 268. 64A C.J.S., Municipal Corporations, § 2167.

36-82-62. Powers as to undertakings and revenue bonds generally.

(a) In addition to the other powers which it may have, any governmental body shall have power under this article:

(1) To acquire, by gift, purchase, or the exercise of the right of eminent domain, and to construct, to reconstruct, to improve, to better, and to extend any undertaking wholly within or wholly outside the governmental body or partially within and partially outside the governmental body; and to acquire, by gift, purchase, or the exercise of the right of eminent domain, lands, easements, rights in lands, and water rights in connection therewith. For property located within a city, the extraterritorial exercise of eminent domain for redevelopment purposes shall be approved by resolution by the governing authority of the city. For property located in an unincorporated area of a county, the extraterritorial exercise of eminent domain for redevelopment purposes shall be approved by resolution by the governing authority of the county. Any such resolution shall be adopted under the procedures specified in Code Section 22-1-10 and shall specifically and conspicuously delineate each parcel to be affected. The requirement for approval by a governing authority

under this Code section shall be in addition to any other approval required by Title 22;

(2) To operate and maintain any undertaking for its own use, for the use of public and private consumers, and for users within and outside the territorial boundaries of the governmental body;

(3) To prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished or made available by such undertaking; and, in anticipation of the collection of the revenues of the undertaking:

(A) To issue revenue bonds to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(B) To issue revenue bonds at any time to refund or refinance, in whole or in part, all outstanding revenue bonds against any existing undertaking or any combination thereof or its anticipated revenue; and

(C) To issue revenue bonds at any time to refund or refinance, in whole or in part, all obligations or debt of any nature, including outstanding revenue bonds or general obligation bonds, against any existing undertaking or any combination thereof or its anticipated revenue;

(4) To pledge to the punctual payment of such bonds and interest thereon all or any part of the revenues of the undertaking (including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired as well as the revenues of existing systems, plants, works, instrumentalities, and properties of the undertaking so improved, bettered, or extended) or of any part of the undertaking;

(5) To fix the value of existing undertakings at the time the governmental body desires to reconstruct, improve, better, or extend the undertaking and to pledge to the payment of the revenue bonds and the interest thereon issued for the undertaking under this article such part of the revenues of the undertaking as the cost of the reconstruction, improvement, betterment, or extension of the undertaking bears to such cost plus the value of the existing undertaking before reconstruction, improvement, betterment, or extension. This paragraph shall not be construed to restrict or limit the powers granted in paragraph (4) of this Code section; and

(6) To make all contracts, execute other instruments, and do all things necessary or convenient in the exercise of the powers granted in this article, or in the performance of its covenants or duties, or in order to secure the payment of its bonds, provided that no encum-

brance mortgage or other pledge of property of the governmental body shall be created thereby, that no property of the governmental body shall be liable to be forfeited or taken in payment of such bonds, and that no debt on the credit of the governmental body shall be thereby incurred in any manner for any purpose.

(b) The use of streets, thoroughfares, parkways, and avenues of traffic in a governmental body for the handling of mobile and foot traffic, the use of same for the parking of mobile equipment, and the availability of off-street parking facilities for such equipment are matters of public concern and the affording of such facilities serves the better welfare of the citizens of a governmental body and may, in the discretion of a governmental body, be considered as one revenue-producing undertaking. If any governmental body desires to acquire, construct, alter, or remodel any property for use as public parking areas or public parking buildings or both and issues revenue bonds in order to finance the acquisition, construction, alteration, or remodeling of the same in accordance with this article, the governmental body may pledge to the payment of the principal, interest, and call premium, if any, of such revenue bonds, the whole or any part of the receipts of parking meters operated by the governmental body, in addition to the revenues derived directly from such public parking areas or public parking buildings or both. (Ga. L. 1937, p. 761, § 3; Ga. L. 1939, p. 362, § 2; Ga. L. 1951, p. 455, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 489, § 2; Ga. L. 1992, p. 2197, § 1; Ga. L. 2006, p. 39, § 24/HB 1313.)

Editor's notes. — Ga. L. 2006, p. 39, § 1/HB 1313, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'The Landowner's Bill of Rights and Private Property Protection Act.'"

Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to petitions for condemnation filed on or after April 4, 2006.

Law reviews. — For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006). For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 157 (2006).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Attack of unconstitutionality on ground of failure to evaluate properties cannot be made against paragraph (a)(4) of this section. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955) (see O.C.G.A. § 36-82-62).

Constitutionality of methods of repaying bonds. — If a municipality desires, a municipality may pledge the entire revenue of existing facilities, along with the revenues from improvements made thereon with funds secured by the issuance of revenue anticipation bonds, to the payment of these certificates and the interest thereon, or the municipality may value the existing facilities, and by following the formula provided in this section,

eliminate from the revenue pledged for payment of the bonds that revenue derived from existing facilities on which improvements were made. By the express terms of Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I), the acts of a municipality under the above provisions of law are authorized by and contravene no provisions of the Constitution. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955) (see O.C.G.A. § 36-82-62).

Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) gives power of eminent domain to authorities such as the Clayton County Water Authority, duly created by act of the General Assembly, and there is no merit in the assertion that the condemnation of an easement for sewage lines over a person's land proceeded illegally because such authority is without authority to exercise the right of eminent domain. Johnston v. Clayton County Water Auth., 222 Ga. 39, 148 S.E.2d 417 (1966).

While the act creating the Henry County Water and Sewerage Authority (HCWSA) did not expressly grant HCWSA the power of eminent domain, the act did grant the HCWSA the power to build and maintain water systems both within and without the limits of the county, and to join the governing authority in the issuance of revenue-anticipation certificates; accordingly, the HCWSA possessed the power of eminent domain as granted under O.C.G.A. § 36-82-62(a). Ware v. Henry County Water & Sewerage Auth., 258 Ga. App. 778, 575 S.E.2d 654 (2002).

Paragraph (a)(5) of this section by its terms in no way restricts or limits powers granted by paragraph (a)(4). Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955) (see O.C.G.A. § 36-82-62).

Section does not permit changes in contracts. — In view of the fact that this section authorized municipalities and public authorities "to make all contracts" a court could not interpret this legislation as allowing changes in contracts except in accordance with the provisions contained in such agreements. Legally binding contracts must be honored. City of Jonesboro v. Clayton County Water Auth., 136 Ga. App. 768, 222 S.E.2d 76 (1975) (see O.C.G.A. § 36-82-62).

Power to collect fees independent. — Power of cities and counties to collect fees, tolls, or other charges from undertakings such as causeways, parking meters, and other endeavors is clearly independent of power to issue revenue bonds, otherwise a county could not operate parking meters without a revenue bond issue and could not charge for meter parking after the bonds were paid. Krause v. City of Brunswick, 242 Ga. 659, 251 S.E.2d 239 (1978).

Although O.C.G.A. § 36-82-62 is part of Georgia's Revenue Bond Law, the power to operate and maintain an undertaking and the power to collect fees or charges from undertakings are clearly independent of the power to issue revenue bonds. McLeod v. Columbia County, 278 Ga. 242, 599 S.E.2d 152 (2004).

Revenue of existing facilities may be pledged to payment of certificates. — It is clear from this section that if a municipality desires, the municipality may pledge the entire revenue of existing facilities, along with the revenues from improvements made thereon with funds secured by the issuance of revenue anticipation bonds, to the payment of these bonds and the interest thereon, or the municipality may value the existing facilities, and by following the formula provided in this article eliminate from the revenue pledged for payment of the bonds that revenue derived from existing facilities on which improvements were made. By the express terms of Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I), the acts of a municipality under the above provisions of law are authorized and contravene no provisions of the Constitution. Dade County v. State, 77 Ga. App. 139, 48 S.E.2d 144 (1948) (see O.C.G.A. § 36-82-62).

Bonds issued to extend existing system of improvements approved. — Under the provisions of the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) and the constitutional sanction thereof (Ga. Const. 1976, Art. IX, Sec. VIII, Para. I (see Ga. Const. 1983, Art. IX, Sec. VI, Para. I)), revenue anticipation bonds may be issued

by a municipality to extend an existing system of municipal improvements by pledging the entire revenue of the whole system to the payment thereof, subject to the rights of holders of prior issues, without pro-rating the values of the existing and the new facilities and pledging only the revenue of such new facilities according to their proportion to the total value. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955).

Municipality has authority to operate sewage treatment facilities under this section. Schanck v. Town of Hephzibah, 236 Ga. 530, 224 S.E.2d 354 (1976) (see O.C.G.A. § 36-82-62).

Improvement of waterworks approved. — When it appeared that revenue anticipation bonds were to be issued by a town for improvement of waterworks under the authority and in accordance with the method prescribed by the Constitution and the laws incorporated therein by reference thereto, the proposed issuance of the revenue anticipation bonds, the proceeding for validation, and the judgment of validation were not contrary to any provisions of the Constitution. Thigpen v. Town of Davisboro, 81 Ga. App. 610, 59 S.E.2d 522 (1950).

Power to exercise eminent domain outside city limits to establish city sewer system under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), and the requirement under Ga. Const. 1983, Art. IX, Sec. II, Para. III(b)(2) that the city must have a contract with the county to provide sewer services to county residents, are not mutually exclusive. Kelley v. City of Griffin, 257 Ga. 407, 359 S.E.2d 644 (1987).

Cited in Miller v. Head, 186 Ga. 694, 198 S.E. 680 (1938); Reed v. City of Smyrna, 201 Ga. 228, 39 S.E.2d 668 (1946); Findley v. City of Vidalia, 78 Ga. App. 581, 51 S.E.2d 542 (1949); Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651 (1962); Austin Enters., Inc. v. DeKalb County, 222 Ga. 232, 149 S.E.2d 461 (1966).

OPINIONS OF THE ATTORNEY GENERAL

Power of eminent domain not limited by zoning regulations. — Municipalities have the right to use public property, located within their corporate city limits, for necessary governmental purposes, regardless of existence of any contrary zoning regulations which prohibit such usage. 1981 Op. Att'y Gen. No. U81-1.

Eminent domain beyond corporate city limits. — Georgia municipalities have power of eminent domain, even beyond corporate city limits, for public works financed by revenue bonds. 1981 Op. Att'y Gen. No. U81-1.

Municipalities need not comply with county zoning regulations when constructing waste-water and sewerage treatment facilities beyond city limits. 1981 Op. Att'y Gen. No. U81-1.

Doubtful that university may issue revenue obligations. — Legal ability of the Board of Regents of the University System of Georgia to incur debt by issuing revenue obligations is doubtful. 1988 Op. Att'y Gen. No. 88-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 1 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 423 et seq., 470 et seq. 64 Am. Jur. 2d, Public Securities and Obligations, § 72 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 1142 et seq. 64 C.J.S., Municipal Corporations, § 1358 et seq. 64A C.J.S. Municipal Corporations, § 2118 et seq.

ALR. — Power of municipality to acquire and operate ice plant, 68 ALR 872.

Implied power of municipality to operate nursery, quarry, gravel pit, or other operation for production of material needed for carrying out powers expressly conferred upon it, 104 ALR 1342.

Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 ALR3d 998.

36-82-63. Adoption of resolution authorizing undertaking and issuance of revenue bonds.

The acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking and the issuance, in anticipation of the collection of the revenues of such undertaking, of bonds to provide funds to pay the cost thereof, may be authorized under this article by resolution or resolutions of the governing body, which may be adopted at a regular or special meeting by a majority of the members of the governing body. Unless otherwise provided therein, such resolution or resolutions shall take effect immediately and need not be laid over or published or posted. The governing body, in determining such cost, may include all costs and estimated costs of the issuance of the bonds; all engineering, inspection, fiscal, and legal expenses; interest estimated to accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this article; and moneys not in excess of an amount equal to 15 percent of the total principal amount of each such bond issue, to establish a debt service reserve with respect to principal and interest requirements on the bonds. (Ga. L. 1937, p. 761, § 4; Ga. L. 1978, p. 2062, § 1.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Requirements of resolution. — Resolution and bonds become a contract between the municipality and bond purchasers which the latter can enforce by mandamus, and the resolution must contain the essential contractual element of definiteness and certainty with reference to the project or improvement to be built or effected. Such a resolution must reasonably show the nature, kind, and location, and such other facts as will with reasonable fullness and definiteness describe and define the undertaking including the estimated costs thereof. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921 (1951).

Revenue bonds must be issued to pay for a definite undertaking, reasonable details of which must be contemplated, chosen, and planned by the governing body of the municipality. It is not absolutely necessary that an intricate and detailed set of plans be incorporated in the resolution but enough facts concerning the proposed project or improvement must appear to afford a key from which the full picture of the project or improvement may be ascertained, such as, for example, a reference to reasonably specific plans, maps, and specifications or their equivalent. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921 (1951).

Resolution sufficient when it refers to plans on file in clerk's office. — Validation proceeding was not subject to motion to dismiss for vagueness and indefiniteness when the resolution of the municipal authorities by which the proceeding was instituted referred to engineering plans and specifications on file in the office of the clerk of council of the city, which contained sufficient detailed information to afford a key by which the full picture of the project might be ascertained. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955).

Approximate fixing of costs necessary. — The very purpose of the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) is to pay for planned improvements. The approximate fixing of the costs is as vital a part of the resolution as the authorization of the bonds. They are supplemental and

inseparable, and indispensable to the rights of the municipality and he municipality's citizens and to the purchasers of the certificates. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921 (1951).

Cited in Miller v. Head, 186 Ga. 694, 198 S.E. 680 (1938); Dade County v. State, 77 Ga. App. 139, 48 S.E.2d 144 (1948); Findley v. City of Vidalia, 78 Ga. App. 581, 51 S.E.2d 542 (1949).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 117.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2135, 2136.

ALR. — Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 ALR 190.

36-82-64. Issuance of revenue bonds generally; form; terms; signatures; interim receipts; negotiability; nontaxability.

Revenue bonds may be issued under this article in one or more series; may bear such date or dates; may mature at such time or times, not exceeding 40 years from their respective dates; may bear interest at such rate or rates not exceeding 9 percent per annum, payable at such time or times; may be payable in such medium of payment at such place or places; may be in such denomination or denominations; may be in such form, either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption, with or without premium; may be declared or become due before the maturity date thereof; may be executed in such manner; and may contain such terms, covenants, assignments, and conditions as the resolution or resolutions authorizing the issuance of such bonds may provide. All bonds issued under this article bearing the signature of officers in office on the date of the signing thereof shall be valid and binding, notwithstanding that before delivery thereof and payment therefor such officers whose signatures appear thereon shall have ceased to be officers of the governmental body issuing the bonds. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this article. Such bonds and interim receipts shall be negotiable for all purposes. Such bonds shall be and are declared to be nontaxable for any and all purposes. (Ga. L. 1937, p. 761, § 5; Ga. L. 1960, p. 1050, § 1; Ga. L. 1967, p. 129, § 1; Ga. L. 1968, p. 1010, § 1; Ga. L. 1970, p. 23, § 1.)

Cross references. — Repeal of interest rate limitations, § 36-82-123.

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Requirements of resolution. — Resolution and bonds become a contract between the municipality and bond purchasers which the latter can enforce by mandamus, and the resolution must contain the essential contractual element of definiteness and certainty with reference to the project or improvement to be built or effected. Such a resolution must reasonably show the nature, kind, and location and such other facts as will with reasonable fullness and definiteness describe and define the undertaking including the estimated costs thereof. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921 (1951).

Revenue bonds must be issued to pay for a definite undertaking, reasonable details of which must be contemplated, chosen, and planned by the governing body of the municipality. It is not absolutely necessary that an intricate and detailed set of plans be incorporated in the resolution but enough facts concerning the proposed project or improvement must appear to afford a key from which the full picture of the project or improvement may be ascertained, such as, for example, a reference to reasonably specific plans, maps, and specifications or their equivalent. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921 (1951).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 148 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2168 et seq.

ALR. — Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 ALR 1109.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 ALR 190.

Sale of municipal or other public bonds at less than par or face value, 162 ALR 396.

36-82-65. Covenants in resolution authorizing issuance of bonds; article and resolution as enforceable contract with bondholders.

(a) Any resolution or resolutions authorizing the issuance of bonds under this article to finance, in whole or in part, the acquisition, construction, reconstruction, improvement, betterment, or extension of an undertaking may contain covenants, notwithstanding that such covenants may limit the exercise of powers conferred by this article, as to:

(1) The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of the undertaking;

(2) The use and disposition of the revenue of the undertaking;

(3) The creation and maintenance of reserves or sinking funds and the regulation, use, and disposition thereof;

(4) The purpose or purposes to which the proceeds of the sale of such bonds may be applied and the use and disposition of such proceeds;

(5) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(6) A fair and reasonable payment by the governmental body to the account of the undertaking for the services, facilities, or commodities furnished such governmental body or any of its departments by the undertaking;

(7) The issuance of other or additional bonds or instruments payable from or a charge against the revenue of the undertaking;

(8) The insurance to be carried thereon and the use and disposition of insurance moneys;

(9) Books of account and the inspection and audit thereof;

(10) Limitations or restrictions as to the leasing or other disposition of the undertaking while any of the bonds or the interest thereon remains outstanding and unpaid; and

(11) The continuous operation and maintenance of the undertaking.

(b) The provisions of this article and of any such resolution or resolutions shall be a contract with every holder of such bonds; and the duties of the governmental body, the governing body, and the officers of the governmental body under this article and under any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate action or proceeding at law or in equity. (Ga. L. 1937, p. 761, § 6; Ga. L. 1987, p. 3, § 36.)

Law reviews. — For comment on Smith v. Hospital Auth., 210 Ga. 801, 82 S.E.2d 827 (1954), see 17 Ga. B.J. 258 (1954).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Proceeds of bonds constitute trust fund. — When revenue anticipation bonds are provided for and validated for a particular purpose, the proceeds thereof constitute a trust fund which cannot be diverted from such purpose and applied to some other purpose. Smith v. Hospital Auth., 210 Ga. 801, 82 S.E.2d 827 (1954), for comment, see 17 Ga. B.J. 258 (1954).

Covenants against disposing of undertaking enforceable. — Covenants against leasing or otherwise disposing of an undertaking, revenues of which are pledged in accordance with the contract between a governing authority and the

authority's bondholders under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), constitute a contract between such governing body and each bondholder which is enforceable by the latter under the provisions of this section. Hicks v. State, 99 Ga. App. 302, 108 S.E.2d 187 (1959) (see O.C.G.A. § 36-82-65).

Cited in Miller v. Head, 186 Ga. 694, 198 S.E. 680 (1938); Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651 (1962).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2135, 2136, 2184 et seq.

36-82-66. Governmental liability for payment of bonds; recitation on bond.

Revenue bonds issued under this article shall not be payable from or charged upon any funds other than the revenue pledged to the payment thereof, nor shall the governmental body issuing the same be subject to any pecuniary liability thereon. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the governmental body to pay any such bonds or the interest thereon, nor to enforce payment thereof against any property of the governmental body; nor shall any such bonds constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the governmental body. Every bond issued under this article shall contain a recital setting forth the substance of this Code section. (Ga. L. 1937, p. 761, § 7.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Bonds not debts within constitutional limitations. — Revenue anticipation bonds issued under the Revenue Bond Law (see O.C.G.A. Art. 3, Ch. 82, T. 36) do not subject the political subdivision issuing the bonds to any pecuniary liability thereon and are therefore not debts against such political subdivision within the meaning of the constitutional provision limiting such indebtedness. Fort Oglethorpe v. Catoosa County, 80 Ga. App. 188, 55 S.E.2d 753 (1949).

Contract between county and airport authority. — Even though, under a contract between county and airport authority for use by the county of an expanded airport facility, the consideration to be paid by the county was not expressed in terms of a definite dollar amount, it was not an unconstitutional "new debt". The contract was a valid intergovernmental contract and the consideration represented the authority's lawful "revenue pledged to the payment of" the bonds. Clayton County Airport Auth. v. State, 265 Ga. 24, 453 S.E.2d 8 (1995).

County was authorized to pledge its taxing authority as security for its obligation to pay for the use of an expanded airport facility under a contract between the county and an airport authority and it was error to deny validation of the authority's revenue bonds on the basis of the county's pledge. Clayton County Airport Auth. v. State, 265 Ga. 24, 453 S.E.2d 8 (1995).

Under a contract between county and airport authority for use by the county of an expanded airport facility, although the county's consideration would not be paid directly to the authority, but paid to the

custodian of the authority's sinking fund, the consideration did not lose the consideration's character as "revenue" for the authority and such payment scheme was not a reason to deny validation of the authority's revenue bonds. Clayton County Airport Auth. v. State, 265 Ga. 24, 453 S.E.2d 8 (1995).

Cited in Miller v. Head, 186 Ga. 694, 198 S.E. 680 (1938); Stephenson v. State, 219 Ga. 652, 135 S.E.2d 380 (1964); Hospital Auth. v. Stewart, 226 Ga. 530, 175 S.E.2d 857 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 209 et seq.

ALR. — Estoppel by recitals in municipal bonds as to lawfulness of issue, 86 ALR 1057; 158 ALR 938.

Subsequent issue of bonds by public body as impairing obligation to prior creditors, 87 ALR 397.

Right of creditor of public body to full or pro rata payment when fund out of which obligation is payable is insufficient to pay all like obligations of equal dignity, 90 ALR 717; 171 ALR 1033.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters, 10 ALR2d 559.

When limitations begin to run against actions on public securities or obligations to be paid out of special or particular fund, 50 ALR2d 271.

36-82-67. Right of bondholder or trustee to apply for receivership upon default in payment on bond; procedure for appointment.

In the event that the governmental body defaults in the payment of the principal or interest on any of the revenue bonds after the same becomes due, whether at maturity or upon call for redemption, and that such default continues for a period of 30 days or in the event that the governmental body or the governing body or the officers, agents, or employees thereof fail or refuse to comply with the essential provisions of this article or default in any material respect in any agreement made with the holders of the revenue bonds, any holders of revenue bonds or any trustee therefor shall have the right to apply in an appropriate judicial proceeding to the superior court of the county in which the governmental body is located or to any court of competent jurisdiction for the appointment of a receiver of the undertaking, whether or not all revenue bonds have been declared due and payable and whether or not such holder or trustee therefor is seeking or has sought to enforce any other right or to exercise any remedy in connection with such revenue bonds. Upon such application, the superior court, if it deems such action necessary for the protection of the bondholders, may appoint and, if the application is made by the holders of 25 percent in principal amount of such revenue bonds then outstanding or by any trustee for holders of such revenue bonds in such principal amount, shall appoint a receiver of the undertaking. (Ga. L. 1937, p. 761, § 8.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Cited in Hicks v. State, 99 Ga. App. 302, 108 S.E.2d 187 (1959).

RESEARCH REFERENCES

C.J.S. — 75 C.J.S., Receivers, § 1 et seq.

36-82-68. Powers and duties of receiver generally.

(a) The receiver appointed under Code Section 36-82-67, directly or by his agents and attorneys, shall forthwith enter into and upon and take possession of the undertaking and each and every part thereof. If the court so directs, the receiver may exclude the governmental body, its governing body, officers, agents, and employees, and all persons claiming under them wholly therefrom. The receiver shall have, hold, use, operate, manage, and control the same and each and every part thereof, in the name of the governmental body or otherwise, as the receiver may deem best. He shall exercise all the rights and powers of the governmental body with respect to the undertaking as the governmental body itself might do. The receiver shall maintain, restore, insure, and keep insured the undertaking and from time to time shall make all such necessary or proper repairs as to the receiver may seem expedient. He shall establish, levy, maintain, and collect such fees, tolls, rentals, and other charges in connection with the undertaking as he deems necessary or proper and reasonable. He shall collect and receive all revenues and shall deposit the same in a separate account and apply the revenues so collected and received in such manner as the court shall direct.

(b) If the undertaking involves parking meters, the control and operation thereof shall remain in the governmental body and the authority of the receiver appointed under Code Section 36-82-67 shall be limited to the right of receiving only the receipts from the parking meters. (Ga. L. 1937, p. 761, § 8; Ga. L. 1953, Jan.-Feb. Sess., p. 489, § 3.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Cited in Hicks v. State, 99 Ga. App. 302, 108 S.E.2d 187 (1959).

RESEARCH REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d, Receivers, §§ 133, 134, 136.

C.J.S. — 75 C.J.S., Receivers, § 147 et seq.

36-82-69. Limitations on authority of receiver and supervising court.

Notwithstanding anything in Code Sections 36-82-67 and 36-82-68, this Code section, and Code Sections 36-82-70 through 36-82-72 to the contrary, the receiver appointed under Code Section 36-82-67 shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the governmental body and useful for the undertaking. The authority of any such receiver shall be limited to the operation and maintenance of the undertaking. No court shall have jurisdiction to enter any order or decree requiring or permitting the receiver to sell, assign, mortgage, or otherwise dispose of any such assets. (Ga. L. 1937, p. 761, § 8; Ga. L. 1993, p. 91, § 36.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Cited in Hospital Auth. v. Stewart, 226 Ga. 530, 175 S.E.2d 857 (1970).

36-82-70. Supervision of receiver by court.

The receiver appointed under Code Section 36-82-67 shall, in the performance of the powers conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing contained in Code Sections 36-82-67 through 36-82-69, this Code section, and Code Sections 36-82-71 and 36-82-72 shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth in Code Sections 36-82-67 through 36-82-69, this Code section, and Code Sections 36-82-71 and 36-82-72. (Ga. L. 1937, p. 761, § 8; Ga. L. 1993, p. 91, § 36.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

RESEARCH REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d, Receivers, § 135.

C.J.S. — 75 C.J.S., Receivers, § 46.

36-82-71. Surrender of receivership upon cure of default.

Whenever all that is due upon the revenue bonds and interest thereon and upon any other notes, bonds, or other obligations and interest thereon having a charge, lien, or encumbrance on the revenues of the undertaking and under any of the terms of any covenants or agreements with holders of revenue bonds has been paid or deposited as provided therein and all defaults have been cured and made good and it appears to the court that no default is imminent, the court shall direct the receiver to surrender possession of the undertaking to the governmental body. The same right of the holders of the revenue bonds to secure the appointment of a receiver shall exist upon any subsequent default as is provided in Code Section 36-82-67. (Ga. L. 1937, p. 761, § 8.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

RESEARCH REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d, Receivers, § 145 et seq.

36-82-72. Construction of Code Sections 36-82-67 through 36-82-71 and this Code section.

If any part or portion of Code Sections 36-82-67 through 36-82-71 and this Code section is held by any court of competent jurisdiction to create a debt of a governmental body or to be unenforceable or ineffective, the remaining parts and portions thereof shall not be affected thereby in any way, but the part or portion so held unenforceable and ineffective shall be severed and rescinded from this article. The intention of the General Assembly not to permit any governmental body to be deprived of its property or to be susceptible or liable to forfeiture shall be controlling. (Ga. L. 1937, p. 761, § 8; Ga. L. 1984, p. 22, § 36.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

36-82-73. Proceedings for validation of revenue bonds generally.

All revenue bonds issued under this article shall be validated in the superior court in the manner set forth in Code Sections 36-82-74 through 36-82-83. (Ga. L. 1937, p. 761, § 9; Ga. L. 1982, p. 3, § 36.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

36-82-74. Notice to district attorney or Attorney General of resolution authorizing revenue bonds.

When any governmental body desires to issue revenue bonds under this article, the officer or officers of such governmental body, within six months after the passage of the resolution authorizing the bonds, shall, in writing, notify the district attorney of the judicial circuit in which the governmental body is located of the fact that such resolution has been passed by the governing body and of the intention of the governmental body to issue such bonds. The service of notice shall be personal upon the district attorney and shall be accompanied by a certified copy of the resolution of the governing body of the governmental body authorizing the bonds. If the district attorney is absent from the circuit, such notice shall be served in person upon the Attorney General. (Ga. L. 1937, p. 761, § 10; Ga. L. 1987, p. 3, § 36.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Effect of failure of solicitor general (now district attorney) to file petition. — When the solicitor general (now district attorney), or the Attorney General, fails to file a validation petition within the 20-day period, any petition filed, without a prior order of court directing such filing, is a nullity. State v. Smallwood, 103 Ga. App. 400, 119 S.E.2d 297 (1961).

State a necessary party in intervention in validation proceeding. — On appeal by intervening taxpayers and citizens from a judgment of the superior court overruling their objections and validating the bonds, the state is a necessary and indispensable party, and, it appearing that the state had not been made a party to the bill of exceptions or served with a copy of the bill of exceptions, the writ of error is properly dismissed. Darby v. City of Vidalia, 75 Ga. App. 804, 44 S.E.2d 454 (1947).

Cited in Dade County v. State, 77 Ga. App. 139, 48 S.E.2d 144 (1948).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 352, 353.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2135, 2136, 2139 et seq.

36-82-75. Duty of district attorney or Attorney General to file petition; order to show cause; service of petition and order; answer.

Within 20 days from the date of service of the notice provided for in Code Section 36-82-74, the district attorney or the Attorney General shall prepare and file, in the office of the clerk of the superior court of the county issuing the bonds or of the county in which the governmental body is located, a petition directed to the superior court of such county in the name of the state and against the governmental body desiring to issue the revenue bonds. The petition shall set forth service of the notice, the name of the governmental body seeking to issue the bonds, the amount of bonds to be issued, for what purpose the bonds are to be issued, what interest they are to bear, how much principal and interest is to be paid annually, when the bonds are to be paid in full, and the security to be pledged to the payment of the bonds; provided, however, the petition may provide for a maximum interest rate and a maximum annual principal and interest payment. The district attorney or the Attorney General shall obtain from the judge of the court an order requiring the governmental body by its proper officers to show cause, at such time and place, either in term or chambers, within 20 days from the filing of the petition, as the judge may direct, why the bonds and the security for the payment thereof should not be confirmed and validated. The petition and order shall be served in the manner now provided by law for the service of petitions upon counties, governmental bodies, or political subdivisions. The officers of the governmental body shall make sworn answers to the petition within the time prescribed. (Ga. L. 1937, p. 761, § 11; Ga. L. 1991, p. 1103, § 1.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Effect of failure of solicitor general (now district attorney) to file petition. — When the solicitor general (now district attorney), or the Attorney General, fails to file a validation petition within the 20-day period, any petition filed, without a prior order of court directing such filing, is a nullity. State v. Smallwood, 103 Ga. App. 400, 119 S.E.2d 297 (1961).

Petition sets forth interest rate with reasonable specificity under the circumstances when the petition states the interest rate "will not exceed 10 3/4%" and there was testimony at the validation hearing that the interest rate will be set at the time of closing. Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62 (1987).

Citizens of municipality have right to object to validation of revenue bonds on grounds that project is unreasonable or unsound. Miller v. State, 83 Ga. App. 135, 62 S.E.2d 921 (1951).

State a necessary party in intervention in validation proceeding. — On appeal by intervening taxpayers and citizens from a judgment of the superior court overruling their objections and validating the bonds, the state is a necessary and indispensable party, and, it appearing that the state had not been made a party to the bill of exceptions or served with a copy of the bill of exceptions, the writ of

error is properly dismissed. Darby v. City of Vidalia, 75 Ga. App. 804, 44 S.E.2d 454 (1947).

Burden of making out case is on state. — State is a necessary and indispensable party to an action to require validation of water and sewer revenue anticipation bonds as the express provisions of this section require that the action be brought in its name. The burden of making out the state's case for the validation of the revenue anticipation bonds was upon the state. Darby v. City of Vidalia, 75 Ga. App. 804, 44 S.E.2d 454 (1947) (see O.C.G.A. § 36-82-75).

Cited in Gibbs v. City of Social Circle, 191 Ga. 422, 12 S.E.2d 335 (1940); Dade County v. State, 77 Ga. App. 139, 48 S.E.2d 144 (1948); Rich v. State, 237 Ga. 291, 227 S.E.2d 761 (1976); Nations v. Downtown Dev. Auth., 255 Ga. 324, 338 S.E.2d 240 (1985); Hay v. Newton County, 246 Ga. App. 44, 538 S.E.2d 181 (2000); Citizens for Ethics in Gov't, LLC v. Atlanta Dev. Auth., 303 Ga. App. 724, 694 S.E.2d 680 (2010), cert. denied, No. S10C1350, 2010 Ga. LEXIS 722 (Ga. 2010).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 353 et seq.

36-82-76. Notice of hearing on validation.

Prior to the hearing of the case, the clerk of the superior court of the county in which it is to be heard shall publish, once during each of the two successive weeks immediately preceding the week in which the hearing is to be held, a notice to the public that on the day specified in the order providing for the hearing of the case the same will be heard. Such publication shall be in the newspaper which is the official organ of the county in which the sheriff's advertisements appear. (Ga. L. 1937, p. 761, § 12; Ga. L. 1966, p. 48, § 1.)

Law reviews. — For note, "Procedural requirements for public approval of tax-exempt industrial development bonds under TEFRA", 19 Ga. St. B.J. 84 (1982).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Cited in Darby v. City of Vidalia, 75 Ga. App. 804, 44 S.E.2d 454 (1947); Dade County v. State, 77 Ga. App. 139, 48 S.E.2d 144 (1948); Youngblood v. State, 259 Ga. 864, 388 S.E.2d 671 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 357.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2135, 2136, 2139 et seq.

36-82-77. Hearing and judgment on validation; parties to proceedings; right of appeal; review of valuation of existing undertakings.

(a) Within the time prescribed in the order or such further time as he may fix, the judge of the superior court shall proceed to hear and determine all questions of law and of fact in the case and shall render judgment thereof. Any citizen of this state who is a resident of the governmental body which desires to issue such bonds may become a party to the proceedings at or before the time set for the hearing and any party thereto who is dissatisfied with the judgment of the court confirming and validating the issuance of the bonds or refusing to confirm and validate the issuance of the bonds and the security therefor may appeal from the judgment under the procedure provided by law in cases of injunction. Only a party to the proceedings at the time the judgment appealed from is rendered may appeal from such judgment.

(b) Whenever any governmental body values existing undertakings as permitted by law in connection with the issuance of bonds, the superior courts may review such action, which review shall be had in the proceedings to validate the revenue bonds. (Ga. L. 1937, p. 761, § 13; Ga. L. 1939, p. 362, § 3; Ga. L. 1966, p. 48, § 2; Ga. L. 1987, p. 3, § 36.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Duty of trial court to review soundness of venture. — It is the duty of the trial court on the hearing of an application to validate revenue anticipation bonds to determine from the evidence the fact of whether or not the venture is sound, feasible, and reasonable, and not to review the discretion of the municipal authorities in proposing the venture. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955).

Generally there can be but one action to validate either certificates or bonds; in either case all interventions would be heard in the validation proceedings, and the allegation that a declaratory judgment is necessary to avoid a multiplicity of actions is a conclusion of the pleader, contrary to the statutory provisions pertaining to validation of revenue anticipation bonds. Liner v. City of Rossville, 212 Ga. 664, 94 S.E.2d 862 (1956).

This section authorizes intervention of "any citizen of this state, resident of such municipality" in any proceeding to validate revenue anticipation bonds. Liner v. City of Rossville, 212 Ga. 664, 94 S.E.2d 862 (1956) (see O.C.G.A. § 36-82-77).

No right to jury trial. — Bond validation proceeding is not one of class of cases, either in terms or by analogy, in which jury trials have ever existed as a matter of right; and it does not fall within Ga. Const. 1976, Art. VI, Sec. XV, Para. I (see Ga. Const. 1983, Art. I, Sec. I, Para. XI). Steadham v. State, 224 Ga. 78, 159 S.E.2d 397, cert. denied, 393 U.S. 825, 89 S. Ct. 87, 21 L. Ed. 2d 96 (1968).

Sufficiency of information in engineering report. — Information contained in engineering report introduced in evidence met the statutory requirements as to certainty and definiteness, in that it showed with reasonable certainty the nature, kind, and location of the improvements and described and defined with

reasonable fullness and definiteness the undertaking including the estimated costs thereof. Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955).

Burden of making out case on intervenors when stipulations make prima facie case. — When citizens as intervenors file an intervention objecting to the validation of revenue anticipation bonds, the burden is on the plaintiff in the proceeding to make out a prima facie case, but when the parties to such a proceeding by stipulation and other admissions admit sufficient material allegations to make out a prima facie case it is not error for the judge to rule that the burden is upon intervenors to introduce evidence in support of their intervention. Dade County v. State, 77 Ga. App. 139, 48 S.E.2d 144 (1948).

Intervention seeking validation denial for nonconformity with law not subject to dismissal. — Intervention filed by a resident and taxpayer of the municipality proposing to issue revenue bonds which seeks to have the validation denied and the proceedings dismissed because such petition was not filed in conformity with such laws is not subject to demurrer (now motion to dismiss). State v. Smallwood, 103 Ga. App. 400, 119 S.E.2d 297 (1961).

Exception must be taken to judgment validating revenue anticipation bonds within 20 days from such judgment, and, when the superior court of a county enters an order validating water revenue certificates of a city on February 16, and exception is not taken to such judgment until March 16, (a period of 28 days), the Court of Appeals is without jurisdiction to review that judgment. Drury v. City of Woodbine, 96 Ga. App. 158, 99 S.E.2d 550 (1957).

State a necessary party in intervention in validation proceeding. — On appeal by intervening taxpayers and citizens from a judgment of the superior court overruling their objections and validating the bonds, the state is a necessary and indispensable party, and, it appearing that the state had not been made a party to the bill of exceptions or served with a copy of the bill of exception, the writ of error is properly dismissed. Darby v. City of Vidalia, 75 Ga. App. 804, 44 S.E.2d 454 (1947).

Notice and a hearing required before dismissal of intervention complaints. — Trial court erred in dismissing a complaint by intervenors objecting to a bond validation proceeding without notice and a hearing on the dismissal issue, although the trial court found that the intervenors had intervened for the improper purpose of seeking $ 1.3 million from developers to avoid the litigation. Citizens for Ethics in Gov't, LLC v. Atlanta Dev. Auth., 303 Ga. App. 724, 694 S.E.2d 680 (2010), cert. denied, No. S10C1350, 2010 Ga. LEXIS 722 (Ga. 2010).

When proper issue of fact is raised as to feasibility of plan to validate refunding bonds, it is for the trial court to determine, under the evidence, such issue. Dade County v. State, 75 Ga. App. 330, 43 S.E.2d 434 (1947); Carter v. State, 93 Ga. App. 12, 90 S.E.2d 672 (1955).

Standard of review. — When the trial court has concluded the project promoted the statutory objectives and there is evidence to support the trial court's decision, the Supreme Court will find no error. Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62 (1987).

Remand to trial court for preparation of findings and conclusions. — Judgment granting the state's petition to validate revenue bonds under the Revenue Bond Law, O.C.G.A. § 36-82-60 et seq., was remanded to the trial court because the trial court failed to mention in the judgment the citizen who intervened in the proceedings and to set forth findings of fact and conclusions of law with respect to various grounds pursued by the citizen as required by O.C.G.A. § 9-11-52(a); prior to the judgment, the citizen requested findings of fact and conclusions of law. Sherman v. Dev. Auth., 314 Ga. App. 237, 723 S.E.2d 528 (2012).

Validation upheld. — After a trial court required two intervenors to post a bond of $625,000 with regard to the intervenors' challenge to the public improvement bond approved by a city's building authority for a sewer project, the trial court properly validated the bond by fol-

lowing all necessary procedural requirements and the bond did not violate Ga. Const. 1983, Art. IX, Sec. V, Para. I(a) since the city's payment for the use of the sewer project was a debt specifically authorized under the constitution pursuant to Ga. Const. 1983, Art. IX, Sec. III, Para. I(a). Berry v. City of E. Point, 277 Ga. App. 649, 627 S.E.2d 391 (2006).

Cited in Gibbs v. City of Social Circle, 191 Ga. 422, 12 S.E.2d 335 (1940); Mays v. State, 110 Ga. App. 881, 140 S.E.2d 223 (1965); Peagler v. State, 223 Ga. 886, 159 S.E.2d 72 (1968); Nations v. Downtown Dev. Auth., 255 Ga. 324, 338 S.E.2d 240 (1985); Youngblood v. State, 259 Ga. 864, 388 S.E.2d 671 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 369, 372.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2139, 2140, 2173.

36-82-78. Effect of judgment of validation.

If no appeal is filed within the time prescribed by law or if an appeal is filed and the judgment is affirmed on appeal, the judgment of the superior court confirming and validating the issuance of the bonds and the security therefor shall be forever conclusive against the governmental body upon the validity of such bonds and the security therefor. (Ga. L. 1937, p. 761, § 14; Ga. L. 1966, p. 48, § 3.)

Law reviews. — For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Conclusiveness of validation judgment. — Judgment of the superior court validating revenue bonds under the Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36), unexcepted to, or affirmed on review, is conclusive against the municipality and the citizens of the municipality upon all questions, including the constitutionality of the statute under which the proceedings are had. Cox v. Georgia Educ. Auth., 225 Ga. 542, 170 S.E.2d 240 (1969).

Validation judgment regarding revenue bonds for a county's acquisition of a hospital, which had been found to be illegal, was nonetheless conclusive because the judgment had not been appealed and sale of the revenue bonds could not be enjoined. Turpen v. Rabun County Bd. of Comm'rs, 251 Ga. App. 505, 554 S.E.2d 727 (2001).

Validation order conclusive on intergovernmental contract's legitimacy. — See AMBAC Indem. Corp. v. Akridge, 262 Ga. 773, 425 S.E.2d 637, cert. denied, 510 U.S. 817, 114 S. Ct. 69, 126 L. Ed. 2d 38 (1993).

Action not barred as collateral attack. — Taxpayer's petition seeking a declaration that the valuation method a county board of assessors and the development authority of the county used for leasehold estates arising from a local development authority sale-leaseback bond transaction was illegal was not barred for being a collateral attack on concluded bond validation proceedings because the challenge to the memoranda of agreement that set forth the tax assessment formula at issue would only constitute a prohibited collateral attack on a concluded bond validation proceeding if the memoranda were specifically adjudicated in the proceedings and held valid by the bond judgment, and

the board and authority had to put forth evidence that the applicable bond validation orders did in fact expressly rule upon each memorandum of agreement. Moreover, even if the taxpayer was barred from challenging the tax agreements on concluded bond transactions, the taxpayer also sought an injunction to prohibit the use of the formula in future bond agreements. Sherman v. Fulton County Bd. of Assessors, 288 Ga. 88, 701 S.E.2d 472 (2010).

Cited in Gibbs v. City of Social Circle, 191 Ga. 422, 12 S.E.2d 335 (1940); Miller v. Columbus, 229 Ga. 234, 190 S.E.2d 535 (1972); Ferdinand v. City of Atlanta, 285 Ga. 121, 674 S.E.2d 309 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 373 et seq.

36-82-79. Entry of reference to judgment on validated bonds; use of entry as evidence; clerk's fee.

Bonds validated under this article shall have stamped or written thereon, by the proper officers of the governmental body issuing the same or by their agents or servants, the words "Validated and confirmed by judgment of the superior court," specifying also the date the judgment was rendered and the court in which it was rendered, which entry shall be signed by the clerk of the superior court in which the judgment was rendered. Such entry shall be original evidence of the fact of the judgment and shall be received as original evidence in any court in this state. If provisions in the resolution authorizing the issuance of bonds grant conversion or exchangeability privileges with respect thereto, upon request of the proper officers of the governmental body issuing bonds in exchange for bonds previously signed by a clerk of the superior court, it shall be the duty of such clerk of the superior court to sign the entry as to judgment of validation made on such bonds proposed to be issued in exchange. Such entry shall likewise be received as original evidence of the fact of such judgment in any court in this state. As specified in the general laws of this state, any clerk of a superior court may sign such entry as to the judgment of validation by a manual or a facsimile signature. The clerk of the superior court shall receive for his services rendered under this Code section the fee prescribed in Code Section 15-6-77. (Ga. L. 1937, p. 761, § 15; Ga. L. 1953, Jan.-Feb. Sess., p. 16, § 1; Ga. L. 1970, p. 497, § 8; Ga. L. 1978, p. 2062, § 2.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2168 et seq.

36-82-80. Payment of costs of proceedings.

The cost of the case shall be paid by the governmental body desiring to issue the bonds. (Ga. L. 1937, p. 761, § 16.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Cited in Miller v. Head, 186 Ga. 694, 198 S.E. 680 (1938).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 376.

36-82-81. Procedure when district attorney or Attorney General fails to file petition.

When a governmental body passes a resolution for the issuance of revenue bonds and notice is duly served upon the district attorney or the Attorney General under the authority of such governmental body, for the purpose of securing a judicial validation of such bonds and the security therefor, but the district attorney or Attorney General fails to proceed within the time specified in Code Section 36-82-75, it shall be competent for such governmental body to represent such facts in writing to the court and to represent further that the failure has been without fault on the part of the governmental body. In such case, it shall be the duty of the court and he shall have the power and authority to inquire into the facts and, upon being satisfied that the failure has not arisen from any fault or neglect on the part of the governmental body, to pass an order authorizing and directing the district attorney or Attorney General to proceed within ten days to file the petition authorized by Code Section 36-82-75. Thereafter, the proceedings shall be had in the same manner as would have been followed had such petition been duly and promptly filed in the first instance. (Ga. L. 1937, p. 761, § 17.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

Court authorized to grant leave to file when city without fault in original failure to file. — When the failure to file a validation petition within the requisite 20-day period is not because of the

fault or negligence of the municipality, on application of the municipality in writing and upon a showing of such fact the superior court is authorized to order the solicitor general (now district attorney) to file such petition within 10 days thereafter. State v. Smallwood, 103 Ga. App. 400, 119 S.E.2d 297 (1961).

Intervention seeking validation denial for nonconformity with law not subject to dismissal. — Intervention filed by a resident and taxpayer of the municipality proposing to issue revenue bonds which seeks to have the validation denied and the proceedings dismissed because such petition was not filed in conformity with such laws is not subject to demurrer (now motion to dismiss). State v. Smallwood, 103 Ga. App. 400, 119 S.E.2d 297 (1961).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 358, 360, 379, 380.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2173.

36-82-82. Effect of judgment of validation upon failure to file petition.

When proceedings are had as provided in Code Section 36-82-81 and result in a judgment validating the bonds and the security therefor, the bonds shall be held and deemed to be as fully and completely validated to all intents and purposes as though the proceedings had been originally taken as provided by this article and the judgment of validation shall be finally and completely conclusive in like manner as provided by Code Section 36-82-78. (Ga. L. 1937, p. 761, § 18.)

JUDICIAL DECISIONS

Constitutionality. — See Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592 (1942).

36-82-83. Validation of revenue bonds of certain hospital authorities.

When a hospital authority created and operating under Article 4 of Chapter 7 of Title 31, the "Hospital Authorities Law," is authorized to confirm and validate revenue bonds in accordance with the procedures of this article, and such an authority is located in more than one county, such bonds shall be confirmed and validated in the superior court of the county in which the principal office of the authority is located; and, where the authority is located in more than one judicial circuit, notice provided for the district attorney shall be served upon the district attorney of the judicial circuit in which the principal office of such an authority is located, in accordance with this article, which district attorney shall have the duties, privileges, and responsibilities and shall exercise the powers provided for district attorneys in revenue bond

validation proceedings under this chapter. (Ga. L. 1950, p. 20, § 2; Ga. L. 1957, p. 36, § 2.)

36-82-84. Applicability of article to common carriers of passengers for hire.

Wherever applicable, this article shall apply to public common carriers of passengers for hire. (Ga. L. 1957, p. 453, § 2.)

36-82-85. Construction of article generally; applicability of certain other provisions of law.

The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, the powers conferred by any other general, special, or local law. The limitations imposed by this article shall not affect the powers conferred by any other general, special, or local law. Bonds may be issued under this article without regard to any other general, special, or local law. The General Assembly declares its intention that the limitations of the amount or percentage of, and the restrictions relating to, indebtedness of a governmental body and the incurring thereof contained in the Constitution of this state and in any general, special, or local law shall not apply to bonds and the issuance thereof under this article. (Ga. L. 1937, p. 761, § 19.)

Law reviews. — For article, "Selected Oddities in Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975).

JUDICIAL DECISIONS

Constitutionality and exhaustiveness of law. — Revenue Bond Law (O.C.G.A. Art. 3, Ch. 82, T. 36) does not purport to be a general law exhaustive of the purposes for which revenue bonds or certificates may be issued and this is not violative of a constitutional provision that laws of a general nature shall have uniform operation throughout the state, and no special law shall be enacted in any case for which provisions have been made by an existing general law (Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV)). Sigman v. Brunswick Port Auth., 214 Ga. 332, 104 S.E.2d 467 (1958).

Municipal Electric Authority Act not contrary. — Provisions of the Municipal Electric Authority Act (O.C.G.A Art. 3, Ch. 3, T. 46) are not unlawful as being contrary to provisions of the Revenue Bond Law (O.C.G.A Art. 3, Ch. 82, T. 36). Thompson v. Municipal Elec. Auth., 238 Ga. 19, 231 S.E.2d 720 (1976).

Bonds not debt within meaning of debt clause. — Bonds issued for financing certain income producing projects and payable solely from income produced thereby shall not be considered as debts within the meaning of the debt clause, Ga. Const. 1976, Art. IX, Sec. VII, Para. I (see Ga. Const. 1983, Art. IX, Sec. V, Para. I). City of Valdosta v. Singleton, 197 Ga. 194, 28 S.E.2d 759 (1944).

RESEARCH REFERENCES

C.J.S. — 82 C.J.S., Statutes, § 395.

ARTICLE 4

BONDS

Editor's notes. — Ga. L. 2000, p. 498, § 4, effective April 20, 2000, repealed and reserved the former article. The former article, relating to bonds for public contractors, consisted of Code Sections 36-82-100 through 36-82-105 and was based on Ga. L. 1910, p. 86, § 1, 2; Ga. L. 1916, p. 94, §§ 1, 3-5; Code 1933, §§ 23-1705-23-1709; Ga. L. 1956, p. 340, §§ 1-6; Ga. L. 1982, p. 3, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 348, § 2, 3; Ga. L. 1989, p. 14, § 36; Ga. L. 1989, p. 461, § 2-4; Ga. L. 1993, p. 91, § 36; Ga. L. 1993, p. 1003, § 1.

Code Section 36-82-104 was amended by Ga. L. 2000, p. 1589, § 3. However, this amendment was not given effect due to the repeal of the former article by Ga. L. 2000, p. 498, § 4.

36-82-100. Expenditure of bond proceeds; auditing.

(a) As used in this Code section, the term "bonds" means any revenue or general obligation bonds issued under this chapter.

(b) When bonds are issued by a county, municipality, or local authority in the amount of $5 million or more, the expenditure of bond proceeds shall be subject to an ongoing performance audit or performance review as provided in this Code section; but this Code section shall not apply if such bond issue is below $5 million.

(c) Each county, municipality, or local authority expending bond proceeds shall provide for a continuing performance audit or performance review of the expenditure of such funds. The county, municipality, or local authority shall contract with a certified public accountant or with an outside auditor, consultant, or other provider accredited or certified in the field of performance audits or performance reviews. Such accountant, auditor, consultant, or other provider shall only be qualified to perform the audit and review functions under this Code section if such accountant, auditor, consultant, or other provider has significant experience and competence in conducting comprehensive audits and reviews in conformance with generally accepted government auditing standards. The performance audit or performance review contract shall:

(1) Include a goal of ensuring to the maximum extent possible that the bond funds are expended efficiently and economically, so as to secure to the county, municipality, or local authority the maximum possible benefit from the bond funds;

(2) Provide for the issuance of periodic public reports, made accessible through electronic or printed format, or both, at a location

advertised in the legal organ not less often than once annually, with respect to the extent to which expenditures are meeting the goal specified in paragraph (1) of this subsection; and

(3) Provide for the issuance of periodic public recommendations, made accessible through electronic or printed format, or both, at a location advertised in the legal organ not less often than once annually, for improvements in meeting the goal specified in paragraph (1) of this subsection.

(d) The auditor, consultant, or other provider to carry out the performance audit or performance review shall be selected through a public request for proposals process. The reasonable cost of the performance audit or performance review shall be paid from the proceeds of the bonds unless a specific waiver of public accountability is included in a legal advertisement in bold print contained within requisite public notice soliciting public preapproval of the applicable bond issue which expressly states that no performance audit or performance review shall be conducted with respect to such bond issue.

(e) On and after May 5, 2006, the expenditure of bond proceeds shall be under the jurisdiction of and subject to review by the inspector general of this state with respect to any claim of fraud, waste, abuse, or mismanagement of funds.

(f) This Code section shall apply with respect to any bonds which are subject to the requirements of subsection (b) of this Code section which are issued after May 5, 2006, until the proceeds of such bond issue have been expended. (Code 1981, § 36-82-100, enacted by Ga. L. 2006, p. 1021, § 2/HB 1012.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "May 5, 2006," was substituted for "the effective date of this Code section" in subsections (e) and (f).

ARTICLE 5

REGULATION OF INTEREST RATES FOR BONDS AND OBLIGATIONS OTHER THAN GENERAL OBLIGATION BONDS

36-82-120. Purpose of article.

It is the purpose of this article to maintain the fiscal solvency of counties, municipal corporations, and political subdivisions of the state and authorities and public corporations created by the Constitution of Georgia or any general, local, or special Act of the General Assembly in public borrowing by exempting from all other laws of the state governing usury or prescribing or limiting interest rates any bonds, notes,

certificates, or obligations of any kind issued by any such county, municipal corporation, political subdivision, authority, or public corporation to evidence any repayment obligation for money borrowed, exclusive of general obligation bonds. (Ga. L. 1981, p. 384, § 1.)

Law reviews. — For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

36-82-121. Definitions.

As used in this article, the term:

(1) "Bonds" means any bonds, notes, certificates, or obligations of any kind issued by any municipality to evidence any repayment obligation for money borrowed by such municipality, exclusive of general obligation bonds.

(2) "General obligation bonds" means any bonds, notes, certificates, or obligations of any kind issued by any municipality which, under the Constitution of Georgia, may not be issued without the consent of a majority of the qualified voters of the municipality affected, voting in an election for that purpose, and also shall mean any bonds, notes, certificates, or obligations of any kind issued to refund outstanding general obligation bonds without an election as authorized under Article IX, Section V, Paragraph III of the Constitution of Georgia.

(3) "Municipality" means any school district, county, municipal corporation, or political subdivision of the state or any authority or public corporation created by the Constitution of Georgia or any general, local, or special Act of the General Assembly which is as of March 16, 1981, or may thereafter be authorized by law to issue bonds. (Ga. L. 1981, p. 384, § 2; Ga. L. 1984, p. 1362, § 7; Ga. L. 1985, p. 149, § 36.)

Editor's notes. — Ga. L. 1984, p. 1362, § 8, not codified by the General Assembly, provided as follows: "The provisions of this Act [which amended this Code section] shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this Act may be inconsistent with the provisions of the Georgia Constitution under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution or the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this Act shall control."

36-82-122. Exemption of bonds from Constitution and laws of Georgia regulating interest rates; fixing of rates of interest by resolution or ordinance.

(a) From and after March 16, 1981, any bonds issued by a municipality shall be exempt from:

(1) All laws of this state governing usury or prescribing or limiting interest rates to be borne by bonds; and

(2) All provisions of the Constitution of Georgia prescribing or limiting interest rates to be borne by bonds to the extent that the Constitution of Georgia permits the General Assembly by law to define further the powers and duties of any such municipality and to enlarge or restrict the same.

(b) The interest rate or rates to be borne by any bonds issued by a municipality shall be fixed by the governing body of such municipality in the resolution or ordinance adopted by such governing body to authorize the issuance of any such bonds. (Ga. L. 1981, p. 384, § 3; Ga. L. 1982, p. 1603, §§ 1, 3.)

Cross references. — Usury, § 7-4-1 et seq.

Editor's notes. — Ga. L. 1982, p. 1603, § 2 ratified and reaffirmed all terms and provisions of Ga. L. 1981, p. 384, as amended by the 1982 Act, and declared that such terms and provisions were of full force and effect. Ga. L. 1982, p. 1603, § 2 stood repealed on November 1, 1982, as provided in § 5(b) of the 1982 Act.

Law reviews. — For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

36-82-123. Repeal of regulations as to interest rates contained in other laws.

All provisions contained in any of the following laws which prescribe or limit the interest rate or rates to be borne by bonds are repealed to the extent the same are in conflict with this article and to the extent necessary to effect the purpose of this article by exempting any bonds issued by a municipality from all laws of the state governing usury or prescribing or limiting interest rates to be borne by bonds:

(1) Article 3 of this chapter, the "Revenue Bond Law";

(2) Article 4 of Chapter 7 of Title 31, the "Hospital Authorities Law";

(3) Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law";

(4) Chapter 62 of this title, the "Development Authorities Law"; and

(5) Article 3 of Chapter 3 of Title 46, pertaining to the Municipal Electric Authority of Georgia. (Ga. L. 1981, p. 384, § 4.)

36-82-124. Construction of article.

This article shall be liberally construed to effect the purposes hereof; and insofar as the provisions of this article may be inconsistent with the provisions of the Constitution of Georgia, under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution of Georgia, or inconsistent with the provisions of any law, including any general, local, or special Act of the General Assembly creating or activating any municipality, this article shall control. (Ga. L. 1981, p. 384, § 5.)

ARTICLE 6

FORM AND SERVICES CONNECTED WITH CREATION OF REPAYMENT OBLIGATIONS

36-82-140. Use of facsimile signatures and seals; contracts with financial institutions to perform certain repayment functions; evidence of repayment obligations.

Notwithstanding the provisions of other laws to the contrary, the following revisions of relevant laws shall apply to any municipality, as defined in paragraph (3) of Code Section 36-82-121, which incurs bonded indebtedness:

(1) If a bond is to be issued to evidence the repayment obligation for borrowed money, the signatures of all officers of the municipality required by law or by the proceedings related to such borrowed money to sign such bond may be facsimile signatures and any seal required to be affixed thereon may be a facsimile seal if provision is also made for a manual authenticating signature on the bond by or on behalf of a designated financial institution or other person or other municipality with whom the municipality has a contract as provided in subparagraph (A) of paragraph (2) of this Code section with respect to such bond. In addition, any officer may adopt as a facsimile signature the signature or facsimile signature of a predecessor in office in the event the signature or facsimile signature of such predecessor appears on such bond;

(2)(A) Any municipality borrowing money may contract for the services of a financial institution or other person within or without the state or another municipality to perform any of the following functions with respect to repayment obligations for borrowed money:

(i) Issuance, authentication, transfer, registration, exchange, and related mechanical and clerical functions;

(ii) Record or bookkeeping or book entry functions;

(iii) Preparation, signing, and issuance of checks or warrants in payment of repayment obligations for borrowed money;

(iv) Preparation and maintenance of reports and accounts; and

(v) Performance of any other duties related to repayment obligations for borrowed money.

(B) The cost of performing the aforesaid functions, whether incurred under a contract or through direct performance by the municipality, may be paid from the borrowed moneys or from other funds lawfully available for the purpose; and

(3)(A) Whenever any municipality shall borrow money any repayment obligation with respect thereto may be evidenced:

(i) By bonds issued in such form either coupon or fully registered or both coupon and fully registered in such denominations and with such provisions for registration, exchangeability, and transferability as the resolution authorizing the borrowing of money or any loan agreement, trust agreement, or other contract or agreement to be entered into in connection with the borrowing of money may provide;

(ii) By book entries under which the right to receive payments of principal, redemption premium, if any, and interest shall be established and transferred only through subsequent book entries; or

(iii) In such other manner as may be provided for in the resolution authorizing the borrowing of money or any loan agreement, trust agreement, or other contract or agreement to be entered into in connection with the borrowing of money.

(B) If any municipality elects to evidence any repayment obligation for borrowed money in a manner permitted by division (ii) or (iii) of subparagraph (A) of this paragraph:

(i) No bond shall be issued to evidence such repayment obligation, and the adoption by the municipality of the resolution authorizing the borrowing of such money and the execution and delivery by the municipality of the loan agreement, trust agreement, or other contract or agreement to be entered into in connection with the borrowing of such money and the receipt by the municipality or by an agent acting on behalf of the munici-

pality of the money borrowed shall be the only requirement to establish lawfully the repayment obligation with respect to such borrowed money; and

(ii) The municipality shall provide for the sending of written statements which provide a record of certain rights with respect to such repayment obligation as of the time of issuance of the statements. Such statements shall be sent each person acquiring rights by registration in such repayment obligation but shall, in and of themselves, confer no rights on the recipient and shall be neither a negotiable instrument nor a security.

(C) In the event any municipality elects to evidence any such repayment obligation in a manner permitted by division (ii) or (iii) of subparagraph (A) of this paragraph, the provisions of any other law of this state to the contrary notwithstanding, the interest of any person in such repayment obligation may be accepted, to the extent of such interest, as a deposit of the repayment obligation to which it relates, provided that the municipality has provided by contract for the pledge of such interest. (Code 1981, § 36-82-140, enacted by Ga. L. 1983, p. 839, § 2; Ga. L. 1984, p. 22, § 36; Ga. L. 1985, p. 149, § 36; Ga. L. 1987, p. 3, § 36.)

36-82-141. Records of ownership, registration, transfer, and exchange of repayment obligations not public records.

The records of ownership, registration, transfer, and exchange of repayment obligations for borrowed money and of persons to whom payment with respect to such obligations is made shall not be public records, it being understood that the availability of such records to the general public would likely have a serious adverse impact on the ability of a municipality to consummate subsequent borrowings of money at the most advantageous cost to such municipality. (Code 1981, § 36-82-141, enacted by Ga. L. 1983, p. 839, § 2.)

36-82-142. Construction of article.

This article shall be liberally construed to effect the purposes hereof; and insofar as the provisions of this article may be inconsistent with the provisions of the Constitution of Georgia, under circumstances where the General Assembly has been granted the power by law to enlarge or restrict such provisions of the Constitution of Georgia, or inconsistent with the provisions of any law, including any general, local, or special Act of the General Assembly relating to bonds issued by any municipality, this article shall control. (Code 1981, § 36-82-142, enacted by Ga. L. 1983, p. 839, § 2.)

ARTICLE 7

REGULATION OF BONDS AND OBLIGATIONS ISSUED BY DEVELOPMENT AUTHORITIES

36-82-160. Requirements for filing; forms; exemptions.

Reserved. Repealed by Ga. L. 2001, p. 1033, § 2, effective April 27, 2001.

Editor's notes. — This article was based on Code 1981, § 36-82-160, enacted by Ga. L. 1984, p. 941, § 1; Ga. L. 1987, p. 3, § 36 and reserved by Ga. L. 2001, p. 1033, § 2.

ARTICLE 8

GEORGIA ALLOCATION SYSTEM

Editor's notes. — Ga. L. 1987, p. 486, effective January 1, 1988, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of §§ 36-82-180 through 36-82-200, concerning the Georgia Allocation Plan, and was based on Ga. L. 1985, p. 1143, § 1 and was amended by Ga. L. 1986, p. 344, § 2.

36-82-180. Short title.

This article shall be known and may be cited as the "Georgia Allocation System." (Code 1981, § 36-82-180, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.)

36-82-181. Legislative purpose.

The economic development and the availability of safe, sanitary, and affordable housing in the State of Georgia are of vital importance to the state and its citizens. Private activity bond financing has been an integral part of the state's program for economic development and affordable housing. The United States government has enacted a law which limits the availability of private activity bond financing within each state. This limited resource must be used in the best interest of the State of Georgia to the fullest extent permitted by federal law. The federal law limits the annual issuance of private activity bonds in the state to an amount not exceeding a state ceiling imposed under the federal law. The federal law not only provides for a distribution of the state ceiling but also provides that a state may by law provide for a different formula for allocating the state ceiling among the governmental units or other authorities in the state having authority to issue private activity bonds. The purpose of this article is to implement a system for allocating the use of private activity bonds, as permitted by federal law, in order to further the economic development of the state,

to further the provision of safe, sanitary, and affordable housing, and otherwise to further the purposes of the laws of the state which provide for the issuance of such bonds. (Code 1981, § 36-82-181, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.)

Law reviews. — For article, "Financing Affordable Housing in Georgia: The Possibility of a Dedicated Revenue Source," see 13 Ga. St. U. L. Rev. 363 (1997).

36-82-182. Definitions.

As used in this article, the term:

(1) "Amount" means, when used with respect to bonds, notices of allocation, or portions of the state ceiling, an amount measured in terms of United States dollars.

(2) "Application" means the application and amendments thereto for a notice of allocation required to be filed by an issuer with the department pursuant to this article.

(3) "Bonds" means any bonds, notes, or other obligations which would be included or treated as private activity bonds for the purpose of the state's volume cap under Section 146 of the Federal Code. Section 146 of the Federal Code provides that, for purposes of that section, the term "private activity bond" shall not include the specifically designated types of bonds which would, under other provisions of the Federal Code, constitute private activity bonds; and for purposes of this article, the term "bonds" shall mean only those bonds, notes, or other obligations subject to the volume cap under Section 146 of the Federal Code. For purposes of this article, the term "bonds" shall include the private activity portion of governmental use bonds.

(4) "Borrower" means any person or persons whose private business use, within the meaning of Section 141 of the Federal Code, would cause any bonds to constitute private activity bonds within the meaning of Section 141 of the Federal Code. If there is more than one such person with respect to any issue of bonds, then the term "borrower" shall mean and include each and every such person known at the time that the issuer files an application.

(5) "Business day" means a day on which the department is open for business. The term "business day" shall not include any Saturday, Sunday, or legal holiday officially observed by the state.

(6) "Carryforward election application" means the application for a notice of allocation for a carryforward project required to be filed by an issuer with all attachments and amendments.

(7) "Commissioner" means the commissioner of the Department of Community Affairs.

(8) "Competitive pool" means that portion of the state ceiling set aside prior to April 1, 1990.

(9) "Confirmation of issuance" means the issuer's confirmation, in writing, that the bonds authorized by a notice of allocation have been issued, in such form as the commissioner may promulgate from time to time.

(10) "Department" means the Department of Community Affairs.

(11) "Economic development share" means that portion of the state ceiling established in accordance with Code Section 36-82-186.

(12) "Employment test" means either of the employment tests set forth in Code Section 36-82-188.

(13) "Exempt facility bond" means any bond described as an exempt facility bond in Section 142 of the Federal Code, other than any obligation described in Section 142(a)(1) or Section 142(a)(2) of the Federal Code and any obligation described in Section 142(a)(6) of the Federal Code which is issued as part of an issue if all of the property to be financed by the net proceeds of such issue is to be owned by a governmental unit, within the meaning of Section 146 of the Federal Code.

(14) "Expiration date" means the final date on which bonds covered by a notice of allocation may be issued and by which date confirmation of issuance must be filed with the department.

(15) "Federal Code" means the Internal Revenue Code of 1986, as amended.

(16) "Filing date" means the final date for filing an application as specified in this article.

(17) "Flexible pool" means that portion of the state ceiling set aside prior to April 1, 1990.

(18) "Flexible share" means that portion of the state ceiling set aside, in accordance with Code Section 36-82-193, for discretionary use by the department.

(19) "Georgia Housing and Finance Authority" means the authority established under Chapter 26 of Title 50.

(20) "HoDAG" means a housing development action grant as administered by the United States Department of Housing and Urban Development.

(21) "Housing bonds" means multifamily housing bonds, single-family housing bonds, or other qualified housing bonds, as the case may be.

(22) "Housing share" means the portion of the state ceiling established in accordance with Code Section 36-83-189.

(23) "Issued" means, with respect to any issue of bonds, that such bonds have been delivered and paid for in full. Payment in full may be made, in whole or in part, by a binding, enforceable agreement to make payment in the future.

(24) "Issuer" means the political subdivision, governmental unit, authority, or other entity which issues any bonds.

(25) "Legal counsel" means an attorney or firm of attorneys duly authorized to practice law in the State of Georgia and admitted to practice before the highest court in the State of Georgia.

(26) "Local housing authorities" means any issuers of multifamily housing bonds, single-family housing bonds, or other qualified housing bonds created and existing under the laws of this state.

(27) "Mortgage credit certificate" means a certificate issued under a qualified mortgage credit certificate program within the meaning of Section 25 of the Federal Code.

(28) "Multifamily housing bond" means any obligation which constitutes an exempt facility bond for the financing of a qualified residential rental project within the meaning of Section 142 of the Federal Code.

(29) "Notice of allocation" means the notice given by the department allocating to an issuer a specified amount from the state ceiling for a specific issue of bonds.

(30) "Period" means any of the time periods into which the calendar year is divided for purposes of authorizing a percentage of the state ceiling to be used during such period as provided in this article as follows: period 1 begins January 1 and ends at midnight on March 31; period 2 begins April 1 and ends at midnight on June 30; period 3 begins July 1 and ends at midnight on September 30; and period 4 begins on October 1 and ends at midnight on December 31.

(31) "Person" means any individual, corporation, limited or general partnership, association, trust, or other entity of any nature whatsoever.

(32) "Policy guidelines" means the policy guidelines set forth in Code Section 36-82-195.

(33) "Private activity portion of governmental use bonds" means the amount of any obligation, treated as a nonqualified amount under

Section 141 of the Federal Code, which is in excess of $15 million and which would cause the obligation to be treated as a private activity bond under Section 141(b)(5) of the Federal Code, unless the amount equal to the excess of the nonqualifying amount over $15 million receives an allocation of the state's volume cap under Section 146 of the Federal Code.

(34) "Project" means the facility, as described in an application, proposed to be financed, in whole or in part, by an issue of bonds.

(35) "Qualified application" means a completed application for a notice of allocation.

(36) "Qualified housing project" means a project for which the issuance or exchange of tax-exempt bonds under the Federal Code for qualified housing purposes requires an allocation from the state ceiling.

(37) "Reservations" means the amounts reserved for the Georgia Housing and Finance Authority, the urban residential finance authorities, and the local housing authorities in Code Section 36-82-190.

(38) "Single-family housing bond" means any obligation described as a qualified mortgage bond in Section 143 of the Federal Code.

(39) "Small issue bond" means any obligation described as a qualified small issue bond in Section 144(a) of the Federal Code.

(40) "State" means the State of Georgia.

(41) "State ceiling" means for any calendar year the state ceiling applicable to the state, as such term is used in the Federal Code. The amount of the state ceiling shall be determined in accordance with the provisions of the Federal Code.

(42) "Student loan bond" means any obligation described as a qualified student loan bond in Section 144(b) of the Federal Code.

(43) "System" means the Georgia Allocation System as established by this article.

(44) "UDAG bonds" means any issue of bonds 95 percent or more of the net proceeds of which are to be used to provide facilities with respect to which an urban development action grant, under Section 119 of the Housing and Community Development Act of 1974, as amended, has been applied for and which, if such grant is made, would be an issue described in Section 144(a)(4)(F) of the Federal Code.

(45) "Unused amount" means, as of any date when the unused amount of any share is computed, the amount of any share from which notices of allocation were authorized to be given during a prior

period, if any, but with respect to which either no notices of allocation were given during such period or notices of allocation were given but confirmation of issuance was not filed with the department on or before the applicable expiration date plus the amount of any share from which notices of allocation have been given during the period which includes the date of computation but with respect to which confirmation of issuance was not filed with the department on or before the applicable expiration date.

(46) "Urban residential finance authority" means any authority established under Chapter 41 of this title. (Code 1981, § 36-82-182, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1989, p. 165, § 1; Ga. L. 1990, p. 817, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1991, p. 1653, § 2-2; Ga. L. 1993, p. 91, § 36.)

36-82-183. Powers of department.

The department shall administer, operate, and manage the system. Action taken by the department, however, shall not constitute an opinion of the department on any legal matters with respect to the federal or state tax treatment of any bonds. Without limiting the generality of the department's power and authority to administer, operate, and manage the system, the department shall make such determinations and decisions, promulgate such rules, require the use of such forms, establish such procedures, and otherwise administer, operate, and manage the system in such respects as may be, in the department's determination, necessary, desirable, or incident to its responsibilities as the administrator, operator, and manager of the system. The General Assembly recognizes and acknowledges that the department will encounter situations which have not been foreseen or provided for in this article and expressly delegates to the department the power and authority to administer, operate, and manage the system in all situations and circumstances, both foreseen and unforeseen, including, without limiting the generality of the foregoing, the power and authority to control and establish procedures for controlling any misuse or abuses of the system and the power and authority to resolve conflicts or inconsistencies, if any, in this article or which may arise in administering, operating, or managing the system pursuant to this article. Any decision which the commissioner or the department makes, and any action or inaction by the commissioner or the department, in administering, managing, and operating the system shall be final and conclusive and shall not be subject to any review, whether judicial, administrative, or otherwise, and shall not be covered by, subject to, or required to comply with or satisfy any provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The system depends upon the truthfulness of representations made and information sub-

mitted in or accompanying applications. The department may use all of the power and authority granted in this article, and such other power or authority as the commissioner may deem necessary or appropriate, in order to take action against those who fail to comply with any of the provisions of this article or who fail to display the truthfulness, which shall include the completeness necessary to avoid untruthfulness by omission, which the commissioner deems necessary for the system. Without limiting the generality of this article, the General Assembly expressly delegates to the department the power and authority to control, permit to be used, or refuse to permit to be used any allocation which would reduce the state ceiling under Section 146(m) of the Federal Code, dealing with the private activity portion of governmental use bonds; and the department, to accomplish this end, may impose requirements upon any issuer, including any other agency or department of the state or any county or municipality or agency, department, or authority of a county or municipality within the state. (Code 1981, § 36-82-183, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, a comma was inserted following the second "operate" in the third sentence.

36-82-184. Determination of state ceiling; records required.

(a) The amount of the state ceiling shall be determined by the department in accordance with the Federal Code. The amount of the state ceiling available at any time shall be the amount, determined by the department, which results from subtracting from the state ceiling:

(1) The amount of bonds issued pursuant to notices of allocation and with respect to which confirmation of issuance has been received by the department on or before the applicable expiration date; and

(2) The amount of bonds covered by notices of allocation outstanding but with respect to which the expiration date has not occurred and with respect to which no confirmation of issuance has been filed with the department.

(b) The department shall keep separate records for the economic development share, housing share, and flexible share and shall make available to the public, by telephone recording or periodic news release or such other means as the department may determine to be appropriate, information with respect to the available amount of the economic development share, housing share, and flexible share. (Code 1981, § 36-82-184, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.)

36-82-185. Application for notice of allocation; receipt of application; issue of notice; confirmation of bond issue; certificates under Federal Code.

(a) Applications for notices of allocation shall be filed, received, and acted on by the department as set forth in this Code section.

(b) Applications shall be filed on such forms as the commissioner shall require. Each application shall be accompanied by the following:

(1) A copy of the inducement resolution or other similar official action taken by the issuer with respect to the bonds and the project which are the subject of the application, signed by an officer, or a designee of said officer, of the issuer;

(2) An affidavit, or copy thereof, of the publisher of the newspaper or newspapers in which the notice of the public hearing required by Section 147(f) of the Federal Code was published, demonstrating that notice of such public hearing was published, and a copy of the approval of the governmental unit or governmental units required by Section 147(f) of the Federal Code, certified by a public official with the authority to certify such approval. This requirement shall not apply to any bonds:

(A) For which Section 147(f) of the Federal Code does not require such a public hearing and approval of a governmental unit or governmental units; or

(B) Projects requiring the approval of the Georgia State Financing and Investment Commission;

(3) A written opinion of legal counsel, addressed to the department, to the effect that the issuer is authorized under the laws of the state to issue bonds for projects of the same type and nature as the project which is the subject of the application. This opinion shall cite by constitutional or statutory reference, including a reference to the session laws of the General Assembly in the case of a constitutional reference, the provision of the Constitution or law of the state which authorizes the bonds for the project;

(4) A written commitment from a lender, financial institution, underwriter, investment banker, or other purchaser, addressed to the department, to purchase the bonds upon delivery by the issuer. In the discretion of the commissioner, this requirement may be waived in the event an officer of the issuer certifies, in writing, that the bonds subject to the application will be issued on a competitive bid basis;

(5) Any additional items specified elsewhere in this article; and

(6) Any other information as reasonably required by the department.

(c) All applications shall apply for amounts of the state ceiling specified in even amounts of $1,000.00.

(d) If more than one person is a borrower with respect to any issue of bonds, any one of such persons may, and all such persons shall not be required to, execute any application, letter, or writing which this article requires to be executed by the borrower.

(e) The department shall stamp or otherwise designate the date on which it receives each completed application. The date stamped or otherwise designated for any application received after the close of business on a business day will be the next business day. For this purpose, the close of business shall be the time officially designated for the close of the department's business day. The application shall not be considered completed and shall not be stamped and accepted for filing unless and until each of the items required under subsection (b) of this Code section has been received by the department. Receipt shall be deemed to occur only on a business day.

(f) A notice of allocation shall constitute the only means by which any of the state ceiling shall be allocated to a specific issuer for a specific issue of bonds. Any bonds for which no notice of allocation is given shall not be deemed to have been allocated as a part of the state ceiling as required by the Federal Code and shall be deemed to be bonds issued in excess of the issuer's private activity bond limit under the Federal Code.

(g) The notice of allocation shall be in writing, shall be given to the issuer at the address specified in the application, shall specify the amount of bonds which may be issued, and shall specify the expiration date. The notice of allocation shall be in such form as the commissioner shall determine. A notice of allocation may not be revoked although it shall expire in accordance with the provisions of this article. All notices of allocation shall be given for amounts of the state ceiling specified in even amounts of $1,000.00.

(h) When bonds covered by a notice of allocation have been issued, confirmation of issuance shall be filed with the department immediately and must be filed on or before the expiration date. Unless otherwise determined by the commissioner, the expiration date for any notice of allocation shall never be later than the second to last business day of a calendar year. To the extent necessary to accomplish this, the department shall shorten the time period otherwise allowed to lapse before an expiration date. If bonds are not issued and confirmation of issuance is not filed with the department on or before the expiration date, the notice of allocation shall cease to be effective. The confirmation of issuance shall be deemed to have been filed with the department on the earliest of:

(1) The date it is actually delivered to the department;

(2) If mailed by the United States mail, certified return receipt requested, the date of the postmark;

(3) If sent to the department by a nongovernmental courier or delivery service, the date delivered to that service; or

(4) If sent by facsimile machine, the date received by the department.

(i) Notwithstanding any provisions of this article to the contrary, the department shall not be required to accept any application for notice of allocation filed with the department after December 15 of each year.

(j) A notice of allocation shall not be effective if the bonds actually issued pursuant to such notice of allocation are in an aggregate principal amount which is less than 90 percent of the amount of bonds authorized by such notice of allocation. The department shall, at the written request of the issuer submitted to the department prior to the actual issuance of the bonds, amend the notice of allocation so as not to be in conflict with this subsection.

(k) The department may, at the written request of an issuer, increase the amount of a notice of allocation by an amount not to exceed 10 percent of the amount of the original application. The department shall not, however, have any obligation to provide such an increase, and no issuer shall have any right to such an increase.

(l) If any issuer in receipt of a notice of allocation fails to have issued the bonds subject to the notice of allocation on or before the expiration date, the project subject to the notice of allocation shall not be eligible to receive an additional notice of allocation for six months after the date of the expiration date of the original notice of allocation. This subsection, however, shall not apply to those projects in which the issuer notifies the department, in writing, 15 days prior to the expiration date of the notice of allocation that the bonds subject to the notice of allocation will not be issued.

(m) The opinions of legal counsel and the commitment from a lender, financial institution, underwriter, investment banker, or other purchaser which are required to accompany applications shall be dated no more than 30 days prior to the date on which the application is filed. Such opinions, such commitment, and any other items required to accompany an application shall be in substantially the form or forms promulgated by the commissioner.

(n) Notices of allocation and other notices and written communications from the department shall be deemed to have been given when duly deposited in the United States mail, first class with all postage

prepaid. Notices of allocation may, at the request of the borrower, be picked up by hand or delivered by courier or other delivery service, at the expense of the borrower. Notices and other written communications to and filings with the department shall be given or made either by actual delivery to the office of the commissioner in Atlanta, Georgia, directed to the attention of the bond allocation manager, or by depositing the same in the United States mail, first class with all postage prepaid, addressed to the office of the commissioner in Atlanta, Georgia, directed to the attention of the bond allocation manager. Such notices and other written communications shall be deemed received only upon actual receipt by the department.

(o) The department shall furnish to the issuer receiving a notice of allocation a certificate of the commissioner certifying under penalty of perjury that the allocation evidenced by the notice of allocation was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign, in such form as the department may specify or as may be required pursuant to the Federal Code.

(p) The commissioner of the department is designated, for any purpose required under the Federal Code, as the state official who shall certify that bonds meet the requirements of the state ceiling, in such form as the department may specify or as may be required pursuant to Section 149(e) of the Federal Code and any other applicable Federal Code section or United States Department of the Treasury regulations promulgated pursuant to the Federal Code. (Code 1981, § 36-82-185, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.)

36-82-186. Economic development share.

(a) Commencing on April 1, 1990, the economic development share for 1990 is established in an amount equal to 40 percent of the state ceiling. The 1990 percentage shall include any allocations made from the competitive pool prior to April 1, 1990. The economic development share for 1991 and each year thereafter is established in an amount equal to 42 1/2 percent of the state ceiling. The economic development share shall be divided among the periods of the year as follows:

(1) In 1990, during period 2, notices of allocation may be given for amounts up to 100 percent of the economic development share, minus the amount of any notices of allocation from the competitive pool made prior to April 1, 1990; and

(2) In 1991 and each year thereafter:

(A) During period 1, notices of allocation may be given for amounts up to 40 percent of the economic development share;

(B) During period 2, notices of allocation may be given for amounts up to 40 percent of the economic development share; and

(C) During period 3, notices of allocation may be given for amounts up to 20 percent of the economic development share.

(b) At any time, notices of allocation may be given for any unused amount. (Code 1981, § 36-82-186, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.)

Cross references. — Elimination of economic development share, § 36-82-197.

36-82-187. Application for economic development share and competitive pool allocation; priority of and approval of application; carrying over; time and amount limitation.

(a) Applications for notices of allocation from the economic development share must be received by the department no later than June 30 of 1990 or September 30 of 1991 and September 30 each year thereafter. Applications for notices of allocation from the economic development share may only be filed for small issue bonds, exempt facility bonds, the private activity portion of governmental use bonds, or any other bond meeting the employment test required by Code Section 36-82-188 on the terms set forth in this Code section. Notwithstanding any provisions of this article to the contrary, the department shall not be required to accept any application for a notice of allocation for exempt facility bonds or the private activity portion of governmental use bonds from the economic development share; and no issuer shall have any right to such an allocation.

(b) In addition to the items specified in Code Section 36-82-185, each application shall be accompanied by the following, where applicable:

(1) If the application is for UDAG bonds:

(A) A copy of the application submitted to the United States Department of Housing and Urban Development for an urban development action grant; and

(B) A written opinion of legal counsel, addressed to the department, to the effect that the bonds which are covered by the application will, based upon the information available at that time to such legal counsel, qualify as UDAG bonds when issued;

(2) If the employment test applies with respect to jobs retained, a written certification which satisfies the employment test, as required by Code Section 36-82-188;

(3) If the application is for exempt facility bonds, a written opinion of legal counsel addressed to the department to the effect that the

bonds covered by the application will, based upon the information available at that time to such legal counsel, qualify as exempt facility bonds when issued;

(4) If the application is for the private activity portion of governmental use bonds, a written opinion of legal counsel addressed to the department to the effect that the bonds covered by the application will, based upon the information available at that time to such legal counsel, qualify as the private activity portion of governmental use bonds when issued; and

(5) If the application is for exempt facility bonds or the private activity portion of governmental use bonds, a written statement of the issuer addressed to the department describing the economic impact of the proposed project on the territorial area of the issuer.

(c) The department shall give its notice of allocation approving the allocation requested by the qualified application within 15 days after the department receives the completed application to the extent that amounts in the economic development share remain available for notices of allocation. Such notices of allocation shall be given with respect to qualified applications in the chronological order, by date, in which the completed qualified applications were received by the department.

(d) If the qualified applications received on the same date request notices of allocation that would exceed the amount of the economic development share which, at the time, remains available for notice of allocation, the department shall decide, within 30 days, which qualified application or qualified applications shall receive a notice of allocation by applying the policy guidelines. The decision of the department shall be final and conclusive.

(e) If at any time none of the economic development share remains available for notices of allocation, but additional amounts of the economic development share become available later because confirmation of issuance was not filed with the department on or before the applicable expiration date for any notice or notices of allocation or for any other reason, the department shall give a notice of allocation with respect to qualified applications including any qualified applications which failed to receive a notice of allocation pursuant to subsection (d) of this Code section. Such notices of allocation shall be given, to the extent that the economic development share becomes available, with respect to qualified applications in the chronological order, by date, in which they were received by the department and, if necessary, by again applying the procedures set forth in subsection (d) of this Code section.

(f) Qualified applications received during a period which do not receive a notice of allocation during that period shall automatically be

deemed to have been received on the first day of the next period. In order to be deemed automatically to have been received on the first day of the next period, however, any such qualified application received by the department more than 45 days prior to the first day of the next period must be certified as current, not more than 30 days prior to the first day of the next period, by a letter from the issuer, addressed to the department and received by the department prior to the first day of the next period, certifying that the information contained in the qualified application and all items accompanying the qualified application are and remain accurate and in full force and effect, except as may be specifically set forth in any amendment to the qualified application which does not result in the application's failing to constitute a qualified application received by the department at or before the receipt of such certification. If such certification is received by the department after the first day of the next period, the application shall be deemed to have been resubmitted and received on the date when such certification was received.

(g) Notwithstanding any provisions of this Code section to the contrary, the department may, in its discretion, give a notice of allocation from the flexible share with respect to any qualified application which is not given a notice of allocation from the economic development share.

(h) Notwithstanding any provisions of this Code section to the contrary, the department shall not be required to give a notice of allocation from the economic development share for any bond in an amount of more than $10 million.

(i)(1) The expiration date for a notice of allocation from the economic development share, other than for UDAG bonds, shall be the first business day which occurs on or after the seventy-fifth day after the date on which the notice of allocation is given.

(2) The expiration date for a notice of allocation for UDAG bonds may, in the department's discretion, be the first business day which occurs on or after the one hundred-eightieth day after the date on which the notice of allocation is given. The department shall not, however, have any obligation to provide an expiration date in excess of 75 days, and no issuer shall have any right to an expiration date in excess of 75 days.

(3) The department may, for good cause shown by the issuer in a written statement submitted to the department prior to such expiration date, extend the expiration date for one, but only one, additional period which shall expire, at the department's discretion, on any date not later than 30 days after the original expiration date. The department shall not, however, have any obligation to provide such an extension; and no issuer shall have any right to such an extension.

(j) If confirmation of issuance is not filed with the department on or before the applicable expiration date, the notice of allocation shall cease to be effective and the amount covered by the notice of allocation shall automatically be added to:

(1) The economic development share if the notice of allocation ceases to be in effect prior to July 1 of 1990 or October 1 of 1991 and October 1 of each year thereafter; or

(2) The flexible share if the notice of allocation ceases to be in effect between July 1 of 1990 and December 31 of 1990 or October 1 of 1991 and December 31 of 1991 and October 1 and December 31 each year thereafter.

(k) On July 1, 1990, and October 1, 1991, and October 1 in each year thereafter the economic development share shall expire and any unused amounts remaining in the economic development share and any amounts for which the notice of allocation ceases to be in effect shall automatically be added to the flexible share. (Code 1981, § 36-82-187, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1989, p. 165, § 2; Ga. L. 1990, p. 817, § 1; Ga. L. 1993, p. 91, § 36.)

36-82-188. Employment test.

(a) In order to qualify for a notice of allocation from the economic development share, a project must satisfy the employment tests as defined in this Code section. To satisfy the employment tests, a project must either:

(1) Be reasonably expected to increase employment within the territorial area of operation of the issuer by not less than one job for each $125,000.00 or part thereof in bond financing. This requirement shall be known as the increased employment test; or

(2) Be reasonably expected to retain within the territorial area of operation of the issuer not less than one job for each $125,000.00 or part thereof in bond financing. This requirement shall be known as the retained employment test.

(b) The increased employment test shall be satisfied if a borrower reasonably expects that the required additional jobs will be available not later than two years after completion of the project and certifies to this effect in writing. The retained employment test shall be satisfied if the borrower certifies in writing, addressed to the department, that, except for the issuance of the bonds which are the subject of the application, such borrower or other entity which operates the project reasonably expects that it would, within two years after the date of the application, either cease operation at the site of the project, thereby reducing employment by not less than the required number, or reduce

employment by not less than the required number without ceasing operation.

(c) A job shall mean, for purposes of either employment test, a position held by a full-time, paid employee with no agreement or arrangement which would limit the duration of such employment. Such an employee either must spend substantially all of his time on the job performing the duties of his job at the location of the project or must be based at the project and spend substantially all of his time on the job performing the duties of his job within the territorial area of operation of the issuer. (Code 1981, § 36-82-189, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-188, as redesignated by Ga. L. 1990, p. 817, § 1; Ga. L. 1993, p. 91, § 36.)

Editor's notes. — Ga. L. 1990, p. 817, § 1, effective April 4, 1990, renumbered former Code Section 36-82-189 as present Code Section 36-82-188; and repealed the former Code Section 36-82-188, which was based on Ga. L. 1987, p. 486, § 1, and which pertained to applications for notices of allocation from the rural area pool.

36-82-189. Housing share.

Commencing on April 1, 1990, the housing share for 1990 is established in an amount equal to 40 percent of the state ceiling. The 1990 percentage shall include any allocations made from the housing share made prior to April 1, 1990. The housing share for 1991 and each year thereafter is established in an amount equal to 42 1/2 percent of the state ceiling. (Code 1981, § 36-82-190, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1989, p. 165, § 3; Code 1981, § 36-82-189, as redesignated by Ga. L. 1990, p. 817, § 1.)

Cross references. — Elimination of housing share, § 36-82-197.

Editor's notes. — Former Code Section 36-82-189 was renumbered by Ga. L. 1990, p. 817, § 1 as present Code Section 36-82-188.

36-82-190. Reservations from housing share.

(a) Commencing on April 1, 1990, and extending through June 30, 1990, and for 1991 and each year thereafter commencing on January 1 and extending through September 30, reservations from the housing share shall be as follows:

(1) Sixty-two percent shall be reserved for the Georgia Housing and Finance Authority for any qualified housing project. This shall be known as the state housing reservation;

(2) Nineteen percent shall be reserved for urban residential finance authorities for any qualified housing project. This shall be known as the urban housing reservation; and

(3) Nineteen percent shall be reserved for local housing authorities for any qualified housing projects. This shall be known as the local housing reservation. The local housing reservation shall be available for notices of allocation on a first-come, first-served basis. If applications exceed the amount available, the department shall apply the policy guidelines provided in Code Section 36-82-195.

(b) Any allocations made in 1990 prior to April 1, 1990, shall be subtracted from the total sum which would be available to an issuer based upon which reservation the issuer qualified for and based upon the percentage formula provided in this Code section.

(c) On July 1, 1990, and October 1, 1991, and October 1 in each year thereafter, the housing share shall expire and any unused amounts remaining in the housing share and any amounts for which the notice of allocation ceases to be in effect shall automatically be added to the flexible share.

(d) If at any time amounts of the state housing reservation or the urban housing reservation remain available for allocation, the Georgia Housing and Finance Authority or the urban residential finance authorities may, upon written notification to the department, transfer any available reservation, or any part thereof, to the state housing reservation, urban housing reservation, or the local housing reservation, if the issuer making the transfer anticipates that such amounts are more likely to be used in the reservation to which the transfer is made. (Code 1981, § 36-82-190, enacted by Ga. L. 1990, p. 817, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1991, p. 1653, § 2-3.)

Editor's notes. — Ga. L. 1990, p. 817, § 1, effective April 4, 1990, redesignated former Code Section 36-82-190 as present Code Section 36-82-189.

36-82-191. Applications for single-family bond projects; issue of notice; confirmation; exploration.

(a) Applications for single-family bond projects must be filed no later than June 30 of 1990 or September 30 of 1991 and September each year thereafter to be eligible to receive an allocation from the housing share.

(b) Each application for a single-family project shall be accompanied by the following:

(1) The items specified in Code Section 36-82-185;

(2) A written opinion of legal counsel, addressed to the department, to the effect that the bonds which are covered by the application will, based upon the information available at that time to such legal counsel, qualify as single-family housing bonds when issued; and

(3) A letter addressed to the department demonstrating that as of the date of the application for notice of allocation the applicant has reserved to individual mortgagors or projects at least 80 percent of the proceeds of any previous single-family bond issue and, if applicable, actually purchased or underwritten at least 25 percent of the loans funded from all previous single-family bond issues of the applicant for any single-family bond issue.

(c) The department shall give its notice of allocation approving the allocation requested by a qualified application within 15 days after the department receives the completed application, provided that the amount of the applications does not exceed the reservations established in Code Section 36-82-190. Such notices of allocation shall be given with respect to qualified applications in the chronological order, by date, in which the completed qualified applications were received by the department.

(d) The provisions of subsections (e) and (g) of Code Section 36-82-187 with respect to notices of allocation from the economic development share shall also apply to notices of allocation from the single-family bond projects from the local housing reservation.

(e) The expiration date for a notice of allocation for a single-family housing project from any housing reservation shall be 75 days following the date of notice of allocation. The department may, for good cause shown by an issuer, extend the expiration date by not more than 30 days, but no issuer shall have any right to such an extension.

(f) If the confirmation of issuance is not filed with the department on or before the expiration date, the notice of allocation shall cease to be effective and the amount covered by the notice of allocation shall automatically be transferred to and added to the respective reservation in the housing share if on or before June 30 of 1990 or September 30 of 1991 and September 30 each year thereafter or the flexible share if after June 30 of 1990 or September 30 of 1991 and September 30 each year thereafter.

(g) Notwithstanding any provision of this article to the contrary, the commissioner may, for good cause shown by an issuer in a written request addressed to the department, waive the provision of paragraph (3) of subsection (b) of this Code section. (Code 1981, § 36-82-192, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1989, p. 165, § 4; Code 1981, § 36-82-191, as redesignated by Ga. L. 1990, p. 817, § 1.)

Editor's notes. — Former Code Section 36-82-191, based on Ga. L. 1987, p. 486, § 1, relating to single-family, multi-family, and general pools, was repealed by Ga. L. 1990, p. 817, § 1, which also enacted the current Code section.

36-82-191.1. Allocation of housing share; expiration date of notice of allocation; state and urban housing share set-aside exempt from subparagraphs (b)(3)(A) through (b)(3)(C).

Repealed by Ga. L. 1990, p. 817, § 1, effective April 4, 1990.

Editor's notes. — This Code section was based on Ga. L. 1989, p. 165, § 5.

36-82-192. Requirements for applications for qualified residential rental projects; periods for notices of allocation; expiration dates for notices; confirmation of issuance required.

(a) Applications for qualified residential rental projects shall be accompanied by the following:

(1) The items specified in Code Section 36-82-185;

(2) A written opinion of legal counsel addressed to the department to the effect that the bonds which are covered by the application will, based upon the information available at that time to such legal counsel, qualify as exempt facility bonds for the financing of a qualified residential rental project when issued;

(3) A written statement of the issuer, addressed to the department, to the effect that the bonds which are covered by the application will, based upon the information available at that time to such issuer, comply with local zoning laws, statutes, ordinances, and resolutions; and

(4) If the project is expected to be issued in combination with a HoDAG, a copy of the application submitted to the United States Department of Housing and Urban Development for a housing development action grant.

(b) If the amount of bonds covered by applications received does not exceed the amount of the local housing reservation, the department shall give its notice of allocation, approving the allocation requested by each application within 15 days after the filing date.

(c) If the amount of bonds covered by applications received on or before the filing date exceeds the amount of the local housing reservation, the department shall determine allocations by applying the policy guidelines. The department shall give its notices of allocation with respect to those applications which it selects not later than 30 days after the filing date. The decision of the department shall be final and conclusive.

(d) The department shall not be required to give notices of allocation from the local housing reservation for any qualified residential rental housing project in an aggregate principal amount of more than 25 percent of the amount of the local housing reservation.

(e) The provisions of subsections (d), (e), and (g) of Code Section 36-82-187 with respect to notices of allocation from the economic development share shall also apply to notices of allocation from the local housing reservation.

(f)(1) The expiration date for a notice of allocation for a qualified residential rental project from the local housing reservation, other than one expected to be issued in combination with a HoDAG, shall be the first business day which occurs on or after the seventy-fifth day after the date on which the notice of allocation is given.

(2) The expiration date for a notice of allocation expected to be issued in combination with a HoDAG may, in the department's discretion, be the first business day which occurs on or after the one hundred-eightieth day after the date on which the notice of allocation is given. The department shall not, however, have any obligation to provide an expiration date in excess of 75 days, and no issuer shall have any right to an expiration date in excess of 75 days.

(3) The department may, for good cause shown by the issuer in a written statement submitted to the department prior to such expiration date, extend the expiration date for one, but only one, additional period which shall expire, at the department's discretion, on any date not later than 30 days after the original expiration date. The department shall not, however, have any obligation to provide such an extension; and no issuer shall have any right to such an extension.

(g) If confirmation of issuance is not filed with the department on or before the applicable expiration date, the notice of allocation shall cease to be effective and the amount covered by the notice of allocation shall automatically be added to the appropriate housing reservation, as applicable, if on or before September 30 of 1991 and September 30 each year thereafter or the flexible share if after June 30 of 1990 or September 30 of 1991 and September 30 each year thereafter. (Code 1981, § 36-82-193.1, enacted by Ga. L. 1989, p. 165, § 8; Code 1981, § 36-82-192, as redesignated by Ga. L. 1990, p. 817, § 1.)

Editor's notes. — Former Code Section 36-82-192 was renumbered by Ga. L. 1990, p. 817, § 1 as present Code Section 36-82-191.

36-82-192.1. Application for single-family project; notice of allocation; waiver of provisions by commissioner.

Repealed by Ga. L. 1990, p. 817, § 1, effective April 4, 1990.

Editor's notes. — This Code section was based on Ga. L. 1989, p. 165, § 6.

36-82-193. Flexible share for 1990.

Commencing on April 1, 1990, the flexible share for 1990 is established in an amount equal to 20 percent of the state ceiling. The 1990 percentage shall include any allocations made from the flexible pool prior to April 1, 1990. The flexible share for 1991 and years thereafter shall be in an amount equal to 15 percent of the state ceiling. The flexible share shall be available for notices of allocation given during period 2 through period 4 in 1990 and period 1 through period 4 in 1991 and each year thereafter. (Code 1981, § 36-82-193, enacted by Ga. L. 1990, p. 817, § 1.)

Editor's notes. — Ga. L. 1990, p. 817, § 1 repealed former Code Section 36-82-193, as enacted by Ga. L. 1987, p. 486, § 1 and amended by Ga. L. 1989, p. 165, § 7, relating to applications for notices of allocation from the multifamily pool, and enacted the current Code section.

36-82-194. Application for flexible pool allocation; issue of notice; confirmation; expiration.

(a) Applications for notices of allocation from the flexible share shall be received and acted on by the department as set forth in this Code section.

(b) Applications for housing bonds shall be filed on the same forms and accompanied by the same items as applications for notices of allocation with respect to such bonds from the housing share. Applications for student loan bonds shall be filed on the same forms and accompanied by the same items as required by Code Section 36-82-185 and a written opinion of legal counsel, addressed to the department, to the effect that the bonds which are covered by the application will, based upon information available at that time to such legal counsel, qualify as student loan bonds under Section 144(b) of the Federal Code when issued. Applications for all other bonds shall be filed on the same forms and accompanied by the same items as applications for notices of allocation from the economic development share. Such applications need not designate that they are filed for a notice of allocation from the flexible share but may be treated as such by the department in its discretion.

(c) The department shall, in its discretion, decide which application or applications shall receive a notice of allocation. The decision of the department shall be final and conclusive.

(d) The provisions of subsection (i) of Code Section 36-82-187 with respect to notices of allocation from the economic development share

shall also apply to notices of allocation from the flexible share. Notwithstanding the requirements of subsection (i) of Code Section 36-82-187, however, the expiration date for a notice of allocation for the private activity portion of governmental use bonds shall be such date as the commissioner may determine, separately in the case of each notice of allocation, and may be extended for any period of time at the department's discretion. (Code 1981, § 36-82-199, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-194, as redesignated by Ga. L. 1990, p. 817, § 1.)

Editor's notes. — Ga. L. 1990, p. 817, § 1, effective April 4, 1990, repealed the former Code Section 36-82-194, which was based on Ga. L. 1987, p. 486, § 1, and which related to applications for notices of allocation from the general pool.

36-82-195. Policy guidelines for making allocations.

(a) When the department is required to decide which applications should receive a notice of allocation, it shall compare the applications from which the selection is to be made, applying the policy guidelines set forth in this Code section. These policy guidelines are designed to assist the department in making its decisions and are not intended to establish definitive tests or standards. The decision which the department makes shall be final and conclusive. Each of the policy guidelines will be applied following the principle that, if all other things were equal among applications which are being compared, the application which most satisfied the intention of the particular policy guideline would be given a notice of allocation. The policy guidelines are stated in subsection (b) of this Code section, and the order in which they are stated does not indicate any priority of one over another.

(b)(1) Special consideration shall be given to projects with a view toward an even and more broadly based geographical distribution of bond issues or bond proceeds, as the case may be, over the state. Applications should be compared based upon the geographic distribution of notices of allocation given during the same calendar year. The department may compare geographic distribution among counties, municipalities, United States congressional districts, or any other geographical areas the department may select. In comparing geographic distribution, the department may consider the amount of bonds covered by notices of allocation and the location of the projects covered by such notices of allocation. For purposes of this policy guideline, the geographic location of student loan bonds shall be considered to be the same as the geographic locations of the educational institutions which are reasonably expected to make use of the proceeds of such student loan bonds; the geographic location of single-family housing bonds shall be considered to be the same as the geographic location of the issuer or, in the case of the Georgia

Housing and Finance Authority, the geographic location, specified by the Georgia Housing and Finance Authority to the department in writing; and the geographic location of the private activity portion of governmental use bonds shall be considered to be the same as the geographic location of the issuer.

(2) Special consideration shall be given to projects that would promote or expand economic opportunities, with particular attention given to areas of economic distress.

(3) Special consideration shall be given to those projects that will meet a severe and critical need and which can demonstrate a significant impact on the territorial area of the issuer in which the project will be carried out.

(4) Special consideration shall be given to projects which the department has determined will enhance the public good and general welfare of the state as a whole. (Code 1981, § 36-82-202, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-195, as redesignated by Ga. L. 1990, p. 817, § 1; Ga. L. 1991, p. 1653, § 2-3.)

Editor's notes. — Ga. L. 1990, p. 817, § 1 repealed the former Code Section 36-82-195, which was based on Ga. L. 1987, p. 486, § 1, and which established the limited purpose share in 1988 and 1989.

36-82-196. Factors to consider in applying policy guidelines.

When the department is required to apply the policy guidelines it may consider such factors, known as evaluation factors, in deciding which applications should receive a notice of allocation. The evaluation factors to be considered shall include, but are not limited to, the number of permanent jobs created or retained; the commitment of the borrower to hire individuals eligible for training under the Job Training Partnership Act or its successor program; the unemployment rate of the territorial area of the issuer compared to the state as a whole; the ratio of private investment to bond financing; evidence of HoDAG or UDAG approval; the amount of benefit to low-income to moderate-income individuals; the cost per qualified residential rental unit; the housing vacancy rate of the territory of the issuer compared to the state as a whole, as determined by the department; and the degree to which the combination of income and price limits serve to target the single-family housing bonds to low-income to moderate-income households. (Code 1981, § 36-82-203, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-196, as redesignated by Ga. L. 1990, p. 817, § 1; Ga. L. 1991, p. 94, § 36.)

Editor's notes. — Ga. L. 1990, p. 817, § 1 repealed the former Code Section 36-82-196, which was based on Ga. L. 1987, p. 486, § 1, and which related to

applications for the limited purpose share and applications for notices of allocation from the limited purpose share.

36-82-197. Transfer of fund from economic development share or applicable reservation component of housing share to the flexible share.

If after the first six months of the year, 75 percent or more of the economic development share or any one or more reservation components of the housing share remains unallocated, the commissioner may transfer any available state ceiling, or any part thereof, from the economic development share or the applicable reservation component of the housing share, as the case may be, to the flexible share, if the commissioner anticipates that such amounts are not likely to be used in either the economic development share or the applicable reservation component of the housing share; provided, however, that no such transfer may be made by the commissioner if an issuer submits a letter to the commissioner indicating that such issuer intends to use all or a portion exceeding 25 percent of the respective share or components thereof. (Code 1981, § 36-82-204, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-197, as redesignated by Ga. L. 1990, p. 817, § 1.)

Editor's notes. — Ga. L. 1990, p. 817, § 1 repealed the former Code Section 36-82-197, which was based on Ga. L. 1987, p. 486, § 1 and which established the department share for 1988, 1989, 1990, and years thereafter.

36-82-198. Flexible share carryforward funds.

The department may set aside and reserve from the flexible share amounts which may be treated as a carryforward for one or more carryforward purposes, within the meaning of Section 146 of the Federal Code. Section 146 of the Federal Code requires an election for the use of such carryforward to a future year or years, and regulations with respect to such carryforwards may be promulgated under the Federal Code. The department shall promulgate such rules and procedures as may be necessary in order to use the provisions of the Federal Code and any regulations promulgated pursuant to the Federal Code for such carryforward. The amount of any such carryforward which is set aside and reserved shall be subtracted from the outstanding amount of the flexible share with the same effect as if a notice of allocation were in the amount of the carryforward and confirmation of issuance were received prior to the expiration date. (Code 1981, § 36-82-205, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-198, as redesignated by Ga. L. 1990, p. 817, § 1.)

Editor's notes. — Ga. L. 1990, p. 817, § 1 repealed former Code Section 36-82-198, which was based on Ga. L. 1987, p. 486, § 1, and which established the flexible pool, the farm loan pool, and the competitive pool.

36-82-199. Carryforward applications.

(a) Unless otherwise determined by the commissioner, carryforward election applications must be filed with the department no later than December 1 of each year. Carryforward election applications shall be filed, received, and acted upon by the department as set forth in this Code section.

(b) Carryforward election applications shall be filed on a form promulgated from time to time by the commissioner. Each carryforward election application shall be accompanied by the following:

(1) A copy of the inducement resolution or other similar official action to the effect the issuer has taken preliminary official action approving the undertaking of the carryforward project;

(2) A written opinion of legal counsel, addressed to the department, to the effect that the issuer is authorized under the laws of the state to issue bonds for projects of the same type and nature as the project which is the subject of the carryforward election application. This opinion shall cite by constitutional or statutory reference, including a reference to the session laws of the General Assembly in the case of a constitutional reference, the provisions of the Constitution or law of the state which authorizes bonds for the project;

(3) A written opinion of legal counsel, addressed to the department, to the effect that the bonds which are covered by the carryforward election application will, based upon the information available at the time to such legal counsel, qualify for carryforward under Section 146(f) of the Federal Code; and

(4) Any other information as reasonably required by the department.

(c) The department shall, in its discretion, decide which carryforward election applications shall receive a notice of allocation. The decision of the department shall be final and conclusive. (Code 1981, § 36-82-206, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.)

Editor's notes. — Ga. L. 1990, p. 817, § 1, effective April 4, 1990, renumbered former Code Section 36-82-206 as present Code Section 36-82-199. Former Code Section 36-82-199 is present Code Section 36-82-194.

36-82-200. Mortgage credit certificate carryforward election.

No issuer of single-family housing bonds may elect to exchange any part of a notice of allocation for mortgage credit certificates without the written authorization of the department. Such authorization shall be in the discretion of the commissioner, and no issuer shall have any right to such authorization. Any unused amount of the state ceiling remaining on the last business day of each year and not subject to a notice of allocation shall automatically be exchanged for mortgage credit certificates carryforward elections in such amounts and to such issuers as the department may determine. Applications for mortgage credit certificates for carryforward purposes shall be on the same forms and accompanied by the same items as required by Code Section 36-82-199. (Code 1981, § 36-82-207, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-200, as redesignated by Ga. L. 1990, p. 817, § 1.)

Editor's notes. — Ga. L. 1990, p. 817, § 1, effective April 4, 1990, repealed former Code Section 36-82-200, which was based on Ga. L. 1987, p. 486, § 1, and which related to applications for notices of allocation from the farm loan pool.

36-82-201. State ceiling deemed allocated and assigned.

If necessary or appropriate for complying with federal rules and regulations implementing the Federal Code, the state ceiling shall be deemed to be allocated to the state and the state's allocation shall be deemed to be or have been assigned to the issuers to which notices of allocations are or were issued. (Code 1981, § 36-82-208, enacted by Ga. L. 1987, p. 486, § 1; Code 1981, § 36-82-201, as redesignated by Ga. L. 1990, p. 817, § 1.)

Editor's notes. — Ga. L. 1990, p. 817, § 1, effective April 4, 1990, deleted former Code Section 36-82-201, which was based on Ga. L. 1987, p. 486, § 1, and which related to applications for notices of allocation from the competitive pool.

36-82-202. Applicability.

The provisions of this article shall apply to all bonds issued on or after April 1, 1990. (Code 1981, § 36-82-209, enacted by Ga. L. 1987, p. 486, § 1; Ga. L. 1990, p. 817, § 1.)

Editor's notes. — The former provisions of Code Section 36-82-202 are the present provisions of Code Section 36-82-195.

ARTICLE 9

TRUSTS

36-82-220. Definitions.

As used in this article, the term:

(1) "Governmental unit" means any county, municipal corporation, school district, or political subdivision of the state.

(2) "Local authority" means any public corporation or authority created by or pursuant to a local or special Act of the General Assembly or a local or special amendment to the Constitution.

(3) "Obligations" means any bonds, notes, certificates, or obligations of any kind to evidence any repayment obligation for money borrowed or to evidence any divided or undivided interest in any lease or installment purchase contract or other obligation.

(4) "Sponsoring governmental unit" means:

(A) Any governmental unit the governing body of which, or any member thereof which, is authorized by law or constitutional amendment to appoint or elect any member of the governing body of a local authority;

(B) Any governmental unit within the territorial or corporate limits of which any member of the governing body of a local authority is required by law or constitutional amendment to reside;

(C) Any governmental unit an elected or appointed official of which is required by law or constitutional amendment to be a member of the governing body of a local authority; or

(D) Any governmental unit any part of the territorial or corporate limits of which are located within the territorial or corporate limits of a governmental unit described in subparagraph (A), (B), or (C) of this paragraph. (Code 1981, § 36-82-220, enacted by Ga. L. 1997, p. 584, § 1.)

36-82-221. Sponsoring governmental unit requirement.

No local authority shall issue or be a grantor of a trust which issues any obligations to finance or refinance any real or personal property to be owned, leased, or operated by any governmental unit which is not a sponsoring governmental unit of such local authority. (Code 1981, § 36-82-221, enacted by Ga. L. 1997, p. 584, § 1.)

36-82-222. Construction.

This article shall be liberally construed to effect the purposes hereof. Insofar as the provisions of this article may be inconsistent with the provisions of any local or special amendment to the Constitution, this article shall control and shall be deemed to be an exercise of the power to enlarge or restrict the provisions of such local or special constitutional amendment. (Code 1981, § 36-82-222, enacted by Ga. L. 1997, p. 584, § 1.)

ARTICLE 10

COMMERCIAL PAPER NOTES FROM GOVERNMENT

36-82-240. Definitions.

As used in this article, the term:

(1) "Governing body" means the board, commission, council, or other local legislative body of governmental entity.

(2) "Governmental entity" means any school district, independent school system, county, municipal corporation, consolidated city-county government, or other political subdivision of the state, any local authority, local body corporate, or local public corporation created by or pursuant to the Constitution of Georgia or any general, local, or special Act of the General Assembly, or any special district or community improvement district of the state. The term "governmental entity" does not include "state authorities" as defined in paragraph (9) of Code Section 50-17-21. (Code 1981, § 36-82-240, enacted by Ga. L. 2004, p. 886, § 5.)

Cross references. — Governmental commercial paper notes, § 50-17-90 et seq.

36-82-241. Governed by general provisions on commercial paper; issuance of security by governmental entity; requirements of governing body renewal and reissuance of commercial paper.

(a) Whenever a governmental entity is authorized by law to issue bonds, notes, or certificates, including but not limited to general obligation bonds, revenue bonds, bond anticipation notes, tax anticipation notes, or revenue anticipation certificates, such governmental entity is authorized to issue such obligation in the form of commercial paper notes. The issuance of commercial paper notes shall be subject to the same restrictions and provisions under the laws of this state which

would be applicable to the issuance of the type of bond, note, or certificate in lieu of which the commercial paper notes are being issued. The governing body of any governmental entity may designate the commercial paper notes issued under this article to be in registered form or bearer form and may provide for payment by wire transfers or electronic funds transfer in accordance with the federal Electronic Fund Transfer Act, 15 U.S.C. Section 1693, et seq. The authority granted by this article to issue commercial paper notes shall not be construed to permit the governmental entity to increase or otherwise alter any debt limits.

(b) To secure commercial paper notes authorized under this article, a governmental entity may:

(1) Pledge its anticipated taxes, grants, other revenue; the proceeds of any bonds, notes, or other permanent financing; or any combination thereof;

(2) Segregate any pledged funds in separate accounts that may be held by the governmental entity or third parties;

(3) Enter into contracts with third parties to obtain standby lines of credit or other financial commitments designated to provide additional security for commercial paper notes authorized by this article;

(4) Establish any reserves deemed necessary for the payment of the commercial paper notes; and

(5) Adopt ordinances or resolutions and enter into agreements containing covenants, including covenants to issue bonds, notes, or other permanent financing and provisions for protection and security of the owners of commercial paper notes, which shall constitute enforceable contracts with such owners.

(c) Commercial paper notes authorized by this article may be in any form and contain any terms, including provisions for redemption at the option of the owner and provisions for the varying of interest rates in accordance with any index, banker's loan rate, or other standard.

(d) The governing body shall adopt an ordinance or resolution finding that issuance of the obligations in the form of commercial paper notes is necessary and desirable, directing the designated officer to arrange for preparation of the requisite number of suitable notes, and specifying other provisions relating to the commercial paper notes including the following:

(1) For each program of commercial paper notes authorized, the final date of maturity and the total aggregate principal amount of the commercial paper notes authorized to be outstanding at any one time

up to the maturity date. The ordinance or resolution may provide that the commercial paper notes may be issued and renewed from time to time until the final maturity date and that the amount issued from time to time may be set by a designated officer of the governmental entity up to the maximum amount authorized to be outstanding at any one time. The ordinance or resolution shall include methods of setting the dates, numbers, and denominations of the commercial paper notes;

(2) The method of setting the interest rates and interest payment dates applicable to the commercial paper notes. Commercial paper notes may bear a stated rate of interest payable only at maturity, which rate or rates may be determined at the time of sale of each unit of commercial paper notes;

(3) The maximum effective rate of interest the commercial paper notes shall bear;

(4) The manner of sale;

(5) The discount, if any, the governmental entity may allow;

(6) Any provisions for the redemption of the commercial paper notes prior to the stated maturity;

(7) The technical form and language of the commercial paper notes; and

(8) All other terms and conditions of the commercial paper notes and of their execution, issuance, and sale deemed necessary and appropriate by the governing body.

(e) The governing body, in the ordinance or resolution authorizing the issuance of commercial paper notes under this article, may delegate to any elected or appointed official or employee of the governmental entity the authority to determine maturity dates, principal amounts, redemption provisions, interest rates, and other terms and conditions of such commercial paper notes that are not appropriately determined at the time of enactment or adoption of the authorizing ordinance or resolution, which delegated authority shall be exercised subject to such parameters, limitations, and criteria as may be set forth in such ordinance or resolution.

(f) Any commercial paper notes may be sold at negotiated sale at a price below the par value thereof.

(g) For purposes of determining the principal amount of debt outstanding in connection with complying with any limitations on the amount of debt outstanding for a governmental entity, commercial paper notes shall be deemed outstanding at any time during the term

of a program of commercial paper notes in an amount equal to the maximum amount authorized in the ordinance or resolution.

(h) The renewal and reissuance from time to time of the commercial paper notes pursuant to a commercial paper note program in an amount up to the maximum amount authorized by the ordinance or resolution shall be deemed to be a refunding of the previously maturing amount. (Code 1981, § 36-82-241, enacted by Ga. L. 2004, p. 886, § 5.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "U.S.C." was substituted for "U.S.C.," in subsection (a); and in subsection (b)(1), "revenue;" was substituted for "revenue,", and "financing;" was substituted for "financing,".

ARTICLE 11

INTEREST RATE MANAGEMENT AGREEMENTS

Cross references. — Interest and usury, T. 7, C. 4. Interest rate management, § 50-17-100 et seq.

36-82-250. Definitions.

As used in this article, the term:

(1) "Counterparty" means the party entering into a qualified interest rate management agreement with the local governmental entity. A counterparty must be a bank, insurance company, or other financial institution duly qualified to do business in the state that either:

(A) Has, or whose obligations are guaranteed by an entity that has, at the time of entering into a qualified interest rate management agreement and for the entire term thereof, a long-term unsecured debt rating or financial strength rating in one of the top two ratings categories, without regard to any refinement or gradation of rating category by numerical modifier or otherwise, assigned by any two of the following: Moody's Investors Service, Inc., Standard & Poors Ratings Service, a division of The McGraw-Hill Companies, Inc., Fitch, Inc., or such other nationally recognized ratings service approved by the governing body of the local governmental entity; or

(B) Has collateralized its obligations under a qualified interest rate management agreement in a manner approved by the local governmental entity.

(2) "Debt" shall include all debt and revenue obligations that a local governmental entity is authorized to incur by law, including without limitation general obligation debt in the form of bonds or

other obligations, revenue bonds and other forms of revenue obligations, and all other debt or revenue undertakings, including, but not limited to, bonds, notes, warrants, certificates or other evidences of indebtedness, or other obligations for borrowed money issued or to be issued by any local governmental entity. "Debt" includes any financing lease or installment purchase contracts of any local public authorities.

(3) "Independent financial adviser" means a person or entity experienced in the financial aspects and risks of qualified interest rate management agreements that is retained by the local governmental entity to render advice with respect to a qualified interest rate management agreement. The independent financial adviser may not be the counterparty or an affiliate or agent of the counterparty on a qualified interest rate management agreement with respect to which the independent financial adviser is advising the local governmental entity.

(4) "Interest rate management plan" means a written plan prepared or reviewed by an independent financial adviser with respect to qualified interest rate management agreements of the local governmental entity, which plan has been approved by the governing body of the local governmental entity.

(5) "Lease or installment purchase contract" means multiyear lease, purchase, installment purchase, or lease purchase contracts within the meaning of Code Sections 20-2-506 and 36-60-13 or substantially similar other or successor Code sections.

(6) "Local governmental entity" means any governmental body as defined in paragraph (2) of Code Section 36-82-61, as amended; provided, however, that such term shall only include authorities which are local public authorities included in the definition thereof set forth in subparagraphs (C) and (D) of paragraph (2) of Code Section 36-82-61, as amended.

(7) "Qualified interest rate management agreement" means an agreement, including a confirmation evidencing a transaction effected under a master agreement entered into by the local governmental entity in accordance with, and fulfilling the requirements of, Code Section 36-82-253, which agreement in the judgment of the local governmental entity is designed to manage interest rate risk or interest cost of the local governmental entity on any debt or lease or installment purchase contract the local governmental entity is authorized to incur, including, but not limited to, interest rate swaps or exchange agreements, interest rate caps, collars, corridors, ceiling, floor, and lock agreements, forward agreements, swaptions, warrants, and other interest rate agreements which, in the judgment of

the local governmental entity, will assist the local governmental entity in managing its interest rate risk or interest cost. (Code 1981, § 36-82-250, enacted by Ga. L. 2005, p. 642, § 1/SB 227.)

36-82-251. Qualified interest rate management agreements authorized.

With respect to all or any portion of any debt or lease or installment purchase contract, either issued or anticipated to be issued by the local governmental entity, the local governmental entity may enter into, terminate, amend, or otherwise modify a qualified interest rate management agreement under such terms and conditions as the local governmental entity may determine, including, without limitation, provisions permitting the local governmental entity to pay to or receive from any counterparty any loss of benefits under such agreement upon early termination thereof or default under such agreement. (Code 1981, § 36-82-251, enacted by Ga. L. 2005, p. 642, § 1/SB 227.)

36-82-252. Plan required; annual review of plan and report.

(a) Prior to executing and delivering a qualified interest rate management agreement, the local governmental entity shall have adopted an interest rate management plan that includes:

(1) An analysis of the interest rate risk, basis risk, termination risk, credit risk, market-access risk, and other risks to the local governmental entity entering into qualified interest rate management agreements;

(2) The local governmental entity's procedure for approving and executing qualified interest rate management agreements;

(3) The local governmental entity's plan to monitor interest rate risk, basis risk, termination risk, credit risk, market-access risk, and other risks;

(4) The local governmental entity's procedure for maintaining current records of all qualified interest rate management agreements that have been approved and executed; and

(5) Such other provisions as may from time to time be required by the governing body of the local governmental entity, including but not limited to additional provisions due to changes in market conditions for qualified interest rate management agreements.

(b) The local governmental entity shall conduct an annual review of its interest rate management plan as to the adequacy of the procedures set forth in such plan for the analysis and monitoring requirements set forth in subsection (a) of this Code section. A report summarizing the

results of such review shall be submitted annually to the governing body of the local governmental entity. The requirements of this subsection shall not be construed as to require the review of any existing interest rate management plan by an independent financial adviser. (Code 1981, § 36-82-252, enacted by Ga. L. 2005, p. 642, § 1/SB 227.)

36-82-253. Requirements for plans; renewal or termination; provisions and limitations regarding obligation for payment; credit enhancement and liquidity agreements.

(a) Each qualified interest rate management agreement shall meet the following requirements:

(1) Subject to subsection (b) of this Code section, the maximum term, including any renewal periods, of any qualified interest rate management agreement may not exceed ten years unless such longer term has been approved by the governing body of the local governmental entity; provided, however, that in no case may the term of the qualified interest rate management agreement exceed the latest maturity date of the bonds, notes, or debt or lease or installment purchase contract referenced in the qualified interest rate management agreement;

(2) The local governmental entity shall enter into a qualified interest rate management agreement only with a counterparty meeting the requirements set forth in paragraph (1) of Code Section 36-82-250;

(3) Prior to the execution and delivery by the local governmental entity of any qualified interest rate management agreement, an interest rate management plan meeting the requirements of Code Section 36-82-252 must have been approved by the governing body of the local governmental entity and the governing body of the local governmental entity shall have been provided evidence that such qualified interest rate management agreement is in compliance with the existing interest rate management plan;

(4) Any qualified interest rate management agreement shall be payable only in the currency of the United States of America; and

(5) Unless otherwise approved by the governing body of the local governmental entity, the notional amount of any qualified interest rate management agreement shall not exceed the outstanding principal amount of the debt or the aggregate payments due under any lease or installment purchase contract to which such agreement relates.

(b) A qualified interest rate management agreement may renew from calendar year to calendar year and may provide for the payment of any

fee related to a termination or a nonrenewal, so long as the following requirements are satisfied:

(1) Such qualified interest rate management agreement shall terminate absolutely at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed;

(2) Any such qualified interest rate management agreement may provide for automatic renewal unless positive action is taken by the local governmental entity to terminate such contract, or may provide for termination or renewal in some other manner not prohibited by law, which method of renewal or termination, in either case, shall be specified in the qualified interest rate management agreement; and

(3) Such qualified interest rate management agreement shall include a statement of the total obligation of the local governmental entity for the calendar year of execution and, if renewed, for the calendar year of renewal.

A qualified interest rate management agreement meeting the requirements of this subsection may also provide that the local governmental entity's obligations will terminate immediately and absolutely at such time as appropriated and other funds encumbered for payment by the local governmental entity pursuant to the terms of such qualified interest rate management agreement are no longer available to satisfy such obligations. The total obligation of the local governmental entity for the calendar year payable pursuant to a qualified interest rate management agreement may be stated in contingent but objective terms with respect to variable rate payments or termination payments, but in that event a qualified interest rate management agreement must provide that it will terminate immediately and absolutely at such time as appropriated and other funds encumbered for its payment are no longer available to satisfy the obligations of the local governmental entity under such agreement. A qualified interest rate management agreement executed under this subsection shall not be deemed to create a debt of the local governmental entity or otherwise obligate the payment of any sum beyond the calendar year of execution or, in the event of a renewal, beyond the calendar year of such renewal.

(c)(1) Any qualified interest rate management agreement of a local governmental entity may provide that it is an unconditional, limited recourse obligation of such local governmental entity payable from a specified revenue source.

(2) A local governmental entity may, in any qualified interest rate management agreement that constitutes a limited recourse obligation of the local governmental entity, pledge to the punctual payment of amounts due under the qualified interest rate management agree-

ment revenues from a specified revenue source, which shall not include any taxes, including, without limitation, collateral derived from such revenue source or proceeds of the debt, including debt for future delivery, to which such qualified interest rate management agreement relates.

(d) A qualified interest rate management agreement that constitutes a limited recourse obligation shall not be payable from or charged upon any funds other than the revenue identified as the source of payment thereof, nor shall the local governmental entity entering into the same be subject to any pecuniary liability thereon. No counterparty under any such qualified interest rate management agreement shall ever have the right to compel any exercise of the taxing power of the state or the local governmental entity to pay any amount due under any such qualified interest rate management agreement, nor to enforce payment thereof against any property of the state or local governmental entity, other than the specified revenue source; nor shall any such qualified interest rate management agreement constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the state or local governmental entity, other than the specified revenue source. Every such qualified interest rate management agreement shall contain a recital setting forth the substance of this subsection.

(e) Any local governmental entity may enter into credit enhancement or liquidity agreements in connection with any qualified interest rate management agreement containing such terms and conditions as the governing body determines are necessary or desirable, provided that any such agreement has the same source of payment as the related qualified interest rate management agreement. (Code 1981, § 36-82-253, enacted by Ga. L. 2005, p. 642, § 1/SB 227.)

36-82-254. Required information in annual financial statements.

The local governmental entity that has entered into a qualified interest rate management agreement shall include in its annual financial statements information with respect to each qualified interest rate management agreement it has authorized or entered into, including any information required pursuant to any statement issued by the Governmental Accounting Standards Board. (Code 1981, § 36-82-254, enacted by Ga. L. 2005, p. 642, § 1/SB 227.)

36-82-255. Applicability of Georgia law; jurisdiction.

When entering into any qualified interest rate management agreement authorized under this article, the agreement shall be governed by the laws of the State of Georgia, and jurisdiction over the local

governmental entity in any matter concerning a qualified interest rate management agreement shall lie exclusively in the courts of the State of Georgia or in the applicable federal court having jurisdiction and located within the State of Georgia. (Code 1981, § 36-82-255, enacted by Ga. L. 2005, p. 642, § 1/SB 227.)

36-82-256. Applicability to prior contracts.

Any contract which has been duly authorized and executed by a local governmental entity before May 2, 2005, shall not be rendered invalid or improper by the provisions of this article; provided, however, that this article shall apply to any renewal of such a contract after May 2, 2005, unless the contract permitted the renewal and set the terms of the renewal contract before January 1, 2005, in which case this article shall not apply to any such renewals. (Code 1981, § 36-82-256, enacted by Ga. L. 2005, p. 642, § 1/SB 227.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "May 2, 2005," was substituted for "the effective date of this article" and "May 2, 2005," was substituted for "its effective date" in this Code section.

CHAPTER 83

LOCAL GOVERNMENT INVESTMENT POOL

Sec.
36-83-1. Short title.
36-83-2. Legislative findings; purpose of chapter.
36-83-3. Definitions.
36-83-4. Authorized investments; delegation of investment authority to financial officer; objective of investment.
36-83-5. Pledge of collateral from depository institutions.
36-83-6. Interfund pooling for investment purposes.
36-83-7. State technical assistance.
36-83-8. Local government investment pool.

36-83-1. Short title.

This chapter shall be known and may be cited as the "Local Government Investment Pool Act." (Ga. L. 1980, p. 1715, § 1.)

36-83-2. Legislative findings; purpose of chapter.

(a) The General Assembly finds that the public interest is served by maximum and prudent investment of idle public funds so that the need for taxes and other public revenues is decreased commensurately with the earnings on such investments.

(b) The purpose of this chapter is to secure the maximum public benefit from the deposit and investment of public funds and, in furtherance of such purpose, to:

(1) Authorize the State Depository Board to establish and maintain a continuing state-wide policy for the deposit and investment of public funds under its control;

(2) Establish a state administered pool for the investment of local government funds;

(3) Authorize the investment of local public funds through the local government investment pool created by this chapter; and

(4) Permit, upon approval by the State Depository Board, any body created for a public purpose to invest funds through the local government investment pool.

(c) The General Assembly finds that the objectives of this chapter will best be obtained through improved money management, emphasizing the primary requirements of safety and liquidity and recognizing the different investment objectives of operating and permanent funds and the effect of the investment of public funds within the state or its localities upon respective state and local social and economic conditions. (Ga. L. 1980, p. 1715, § 2; Ga. L. 1986, p. 205, § 1.)

36-83-3. Definitions.

As used in this chapter, the term:

(1) "Depository institution" means any commercial bank or trust company, mutual savings bank, savings and loan association, or building and loan association existing under the laws of this state or of the United States and domiciled in this state.

(2) "Local government" means any municipality, county, school district, special district, or other political subdivision of this state, as well as any department, agency, or board of that political subdivision, including but not limited to a public library, which has been authorized to make separate deposits to its own account under this chapter by the governing authority of the political subdivision of which it is a department, agency, or board. (Ga. L. 1980, p. 1715, § 3; Ga. L. 1983, p. 455, § 1.)

36-83-4. Authorized investments; delegation of investment authority to financial officer; objective of investment.

(a)(1) Subject to the procedures set forth in this chapter, the governing authority of any local government may invest and reinvest any money subject to its control and jurisdiction in:

(A) Obligations of this state or of other states;

(B) Obligations issued by the United States government;

(C) Obligations fully insured or guaranteed by the United States government or a United States government agency;

(D) Obligations of any corporation of the United States government;

(E) Prime bankers' acceptances;

(F) The local government investment pool established by Code Section 36-83-8;

(G) Repurchase agreements; and

(H) Obligations of other political subdivisions of this state.

(2) Subject to the procedures set forth in this chapter, any other body created for a public purpose may, upon obtaining prior approval of the State Depository Board, invest and reinvest any money subject to its control and jurisdiction in the local government investment pool established by Code Section 36-83-8.

(b) The governing authority of any local government, by resolution or ordinance, may delegate the investment authority provided under

subsection (a) of this Code section to the treasurer or other financial officer charged with custody of the funds of the local government.

(c) In selecting among avenues of investment or among institutional bids for deposits, the highest rate of return shall be the objective, given equivalent conditions of safety and liquidity.

(d) This Code section shall in no way impair the power of a unit of local government to hold funds in deposit accounts with eligible depository institutions. (Ga. L. 1980, p. 1715, § 4; Ga. L. 1986, p. 205, § 2; Ga. L. 1992, p. 6, § 36.)

OPINIONS OF THE ATTORNEY GENERAL

Hospital authorities not eligible. — Hospital authorities created pursuant to the "Hospital Authorities Law" are not eligible to participate in the local government investment pool created by O.C.G.A. § 36-83-8. 1982 Op. Att'y Gen. No. 82-78 (issued prior to the 1986 amendment).

36-83-5. Pledge of collateral from depository institutions.

Local governments shall require from a depository institution a pledge of collateral as provided in Chapter 8 of Title 45. (Ga. L. 1980, p. 1715, § 5.)

36-83-6. Interfund pooling for investment purposes.

(a) Local governments may effect and are encouraged to effect temporary transfers among separate funds, for the purpose of pooling amounts available for investment.

(b) This pooling may be accomplished through interfund advances and other appropriate means consistent with recognized principles of governmental accounting, if:

(1) Moneys are available for the investment period required;

(2) The investment fund can repay the advance by the time needed;

(3) The transactions are fully and promptly recorded;

(4) The interest earned is credited to the loaning or advancing fund; and

(5) The transaction does not violate subsection (d) of Code Section 36-83-8 with respect to prior agreements, laws, or covenants which may restrict pooling. (Ga. L. 1980, p. 1715, § 6.)

36-83-7. State technical assistance.

The State Depository Board, through the state treasurer, may assist local governments in developing effective cash management policies

and in investing funds that are temporarily in excess of operating needs by:

(1) Explaining investment opportunities provided by the local government investment pool to local governments through publications and other appropriate means;

(2) Informing local governments of the state's practice and experience in investing short-term funds; and

(3) In consultation with the Department of Community Affairs, providing technical assistance in the investment of idle funds to municipalities and counties that request such assistance. (Ga. L. 1980, p. 1715, § 7; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" in the middle of the introductory paragraph.

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in the introductory paragraph of this Code section.

36-83-8. Local government investment pool.

(a) A local government investment pool is created, consisting of the aggregate of all funds from local governments and all funds from other bodies created for a public purpose which the State Depository Board has agreed to accept that are placed in the custody of the state for investment and reinvestment as provided in this chapter.

(b)(1) The investment policies for the local government investment pool shall be established by the State Depository Board.

(2) The state treasurer shall administer the local government investment pool on behalf of the participating local governments.

(3) The state treasurer shall develop such procedures consistent with the policies established pursuant to paragraph (1) of this subsection as he deems necessary for the efficient administration of the pool, including, but not limited to:

(A) Specification of minimum amounts which may be deposited in the pool and minimum periods of time for which deposits shall be retained in the pool;

(B) Payment of amounts equivalent to administrative expenses from the earnings of the pool;

(C) Distribution of the earnings in excess of such expenses or allocation of losses to the several participants, in a manner which equitably reflects the differing amount of their respective invest-

ments and the differing periods of time for which such amounts were in the custody of the pool; and

(D) Procedures for the deposit and withdrawal of funds.

(c) The state treasurer shall invest moneys in the local government investment pool with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering first the probable safety of their capital and then the probable income to be derived. Specifically, the types of authorized investments for pool assets shall be limited to those set forth in Code Section 50-5A-7 and Chapter 17 of Title 50.

(d)(1) The governing authority of any local government having funds which are available for investment and which are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its financial officer to remit such funds to the state treasurer for investment as part of the local government investment pool.

(2) Upon determination by the local governing authority that it is in the best interest of the local government to deposit funds in the investment pool, it shall adopt and file with the state treasurer a certified copy of a resolution or ordinance authorizing investment of its funds in the investment pool. The resolution or ordinance shall name the local government official or officials responsible for the deposit and withdrawal of such funds.

(3) The resolution or ordinance filed with the state treasurer shall be accompanied by a statement as to the approximate cash flow requirements of the local government for the invested funds. Subsequent deposits into the investment pool shall be accompanied by a statement as to the intended duration of the investment or the anticipated date of withdrawal of the funds from the pool.

(e) A separate account designated by name or number for each participant in the fund shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report showing the changes in investments made during the preceding month shall be furnished to each participant having a beneficial interest in the investment pool. Details of any investment transaction shall be furnished to any participant upon request.

(f) The principal and credited income of each account maintained for a participant in the investment pool shall be subject to payment from the pool at any time upon request, subject to the procedures developed in accordance with paragraph (3) of subsection (b) of this Code section. Accumulated income shall be credited to each participant account at least monthly.

(g) Except as provided in this Code section, all instruments of title of all investments of the investment pool shall remain in the custody of the state treasurer. The state treasurer may deposit with one or more fiscal agents or banks those instruments of title which he considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income or of the proceeds of sale. The state treasurer shall collect the principal and interest or other income from investments of the investment pool the instruments of title to which are in his custody, when due and payable.

(h) In the event of default in the payment of the principal or interest or other income of any investment of the investment pool, the state treasurer may:

(1) Institute the proper proceedings to collect the matured principal or interest or other income;

(2) Accept for exchange purposes refunding bonds or other evidences of indebtedness, at interest rates to be agreed upon by the state treasurer and the obligor;

(3) Make compromises, adjustments, or disposition of the matured principal or interest or other income, as the state treasurer considers advisable for the purpose of protecting the moneys invested; or

(4) Make compromises or adjustments as to future payments of principal or interest or other income, as the state treasurer considers advisable for the purpose of protecting the moneys invested.

(i) No payment may be issued upon any account in an amount greater than the sum total of the particular account to which it applies. If such payment is issued, the state treasurer shall be personally liable under his official bond for the entire overdraft resulting from the payment if made.

(j) Subject to the objectives and requirements of this Code section, the state treasurer shall formulate procedures for the investment and reinvestment of funds in the investment pool and the acquisition, retention, management, and disposition of investments of the investment pool.

(k) Funds in the local government investment pool may be consolidated with state funds under the control of the state treasurer for investment purposes, if accurate and detailed accounting records are maintained for the funds of each participating local government and a proportionate amount of interest earned is credited to the local government investment pool and the accounts therein.

(l) Payments of amounts for administrative expenses shall be deemed contractually obligated funds held in trust for the benefit of the

local government investment pool and shall not lapse. (Ga. L. 1980, p. 1715, § 8; Ga. L. 1986, p. 205, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 1474, § 4; Ga. L. 2010, p. 863, §§ 3, 4/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" throughout this Code section; and substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" near the middle of paragraph (b)(2) and at the end of the first sentence of subsection (g).

OPINIONS OF THE ATTORNEY GENERAL

Hospital authorities not eligible. — Hospital authorities created pursuant to the "Hospital Authorities Law" are not eligible to participate in the local government investment pool created by O.C.G.A. § 36-83-8. 1982 Op. Att'y Gen. No. 82-78 (issued prior to the 1986 amendment to O.C.G.A. § 36-83-4).

CHAPTER 84

PURCHASING PREFERENCES

Sec.
36-84-1. Preferences for products manufactured in Georgia; reasonableness.

Editor's notes. — Ga. L. 2000, p. 498, § 5, effective April 20, 2000, repealed and reserved this chapter. The former chapter, relating to competition for public work bids, consisted of Code Sections 36-84-1 and 36-84-2 and was based on Ga. L. 1896, p. 73, §§ 1-5; Civil Code 1910, §§ 390-392; Penal Code 1910, § 741; Code 1933, §§ 23-1710—23-1712, 23-9905.

Ga. L. 2009, p. 204, § 6/SB 44, not codified by the General Assembly, provides that: "This Act shall not be applied to impair an obligation of any contract entered into prior to the date this Act becomes effective."

36-84-1. Preferences for products manufactured in Georgia; reasonableness.

(a) As used in this Code section, the term "local government" means a county, municipality, or consolidated government.

(b) Local governments, when contracting for or purchasing supplies, materials, equipment, or agricultural products, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(c) In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds $100,000.00, the local government shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. No local government shall divide a contract or purchase which exceeds $100,000.00 for the purpose of avoiding the requirements of this subsection.

(d) Nothing in this Code section shall negate the requirements of Code Section 50-5-73. (Code 1981, § 36-84-1, enacted by Ga. L. 2009, p. 204, § 2/SB 44.)

CHAPTER 85

INTERLOCAL RISK MANAGEMENT AGENCIES

Sec.

36-85-1. Definitions.

36-85-2. Formation; functions; counties and municipalities as separate classes; agreements creating agencies; files of administrator are sole property of agency.

36-85-3. Board of trustees.

36-85-4. Agency not an insurer.

36-85-5. Certificate of authority; application.

36-85-6. Approval of certificate; renewal.

36-85-7. Funds to be maintained.

36-85-8. Investment of assets.

36-85-9. Local government liability for funds.

36-85-10. Contracts between agency and administrator.

36-85-11. Fidelity bond and errors and omissions insurance; administrators to maintain office in state.

36-85-12. Revocation, suspension, or refusal to renew certificate of authority; hearing; voluntary dissolution of fund.

36-85-13. Exemption from state and local taxes and fees.

36-85-14. Periodic examinations.

36-85-15. Fund deficiencies; assessments upon members; liquidation of fund.

36-85-16. Rules and regulations.

36-85-17. Hearings.

36-85-18. Excess loss funding program required.

36-85-19. Audits of funds.

36-85-20. Exercise of authority not provision of liability insurance; sovereign immunity.

Cross references. — Joint self-insurance programs for boards of education and school systems, § 20-2-2001 et seq.

Administrative rules and regulations. — Public self-insurance funds, Official Compilation of the Rules and Regulations of the State of Georgia, Comptroller General, Office of Commission of Insurance, Chapter 120-2.

Code Commission notes. — Ga. L. 1986, p. 1269, § 1 and Ga. L. 1986, p. 1496, § 1 both enacted a Chapter 85 of Title 36. The chapter enacted by Ga. L. 1986, p. 1269, § 1, was redesignated as Chapter 67A of Title 36 pursuant to Code Section 28-9-5.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

36-85-1. Definitions.

As used in this chapter, the term:

(1) "Administrator" means any person who administers a group self-insurance fund other than the interlocal risk management agency.

(2) "Commissioner" means the Commissioner of Insurance.

(3) "County" means any county of the State of Georgia. Such term shall include any public authority, commission, board, or similar agency which is created by local or general Act of the General Assembly and which carries out its functions on a county-wide basis

or wholly within the unincorporated area of a county. The term shall also include any such body which is created or activated by a resolution or ordinance of the governing body of the county individually or jointly with other political subdivisions of the state.

(4) "General liability" means liability for bodily injury, death, or damage to property owned by others to which a municipality or county may be subject either directly or by reason of liability arising out of an act, error, or omission of its employee, agent, or officer in the course and scope of employment.

(5) "Governing authority" means the body which exercises the legislative functions of the municipality or county.

(6) "Group self-insurance fund" or "fund" means a pool of public moneys established by an interlocal risk management agency from contributions of its members in order to pool the risks of general liability, motor vehicle liability, property damage, or any combination of such risks.

(7) "Interlocal risk management agency" or "agency" means an association formed by municipalities or counties by the execution of an intergovernmental contract for the development and administration of an interlocal risk management program and one or more group self-insurance funds.

(8) "Interlocal risk management program" means a plan and activities carried out under such plan by an interlocal risk management agency to reduce risk of loss on account of general liability, motor vehicle liability, or property damage, including safety engineering and other loss prevention and control techniques, and to administer one or more group self-insurance funds, including the processing and defense of claims brought against members of the agency.

(9) "Motor vehicle liability" means liability to which a municipality or county may be subject either directly or by reason of liability arising out of the use of a motor vehicle by its employee, agent, or officer in the course and scope of employment. Said term shall also include loss on account of property damage to motor vehicles.

(10) "Municipality" means a municipal corporation of the State of Georgia. Such term shall include any public authority, commission, board, or similar agency which is created by general or local Act of the General Assembly and which carries out its functions wholly or partly within the boundaries of the municipality. The term shall also include such bodies which are created or activated by an ordinance or resolution of the governing body of the municipality individually or jointly with other political subdivisions of the state. The term shall also include any independent school system of this state which elects

to participate in the interlocal risk management agency comprised of municipalities; provided, however, such independent school system must have a full-time equivalent student count of at least 2,800 in order to elect to become a member of the interlocal risk management agency comprised of municipalities.

(11) "Property damage" means loss to which a municipality or county may be subject by reason of physical damage or destruction to real or personal property owned or leased by such municipality or county. (Code 1981, § 36-85-1, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 1; Ga. L. 1991, p. 717, § 2.)

Law reviews. — For annual survey of law of torts, see 44 Mercer L. Rev. 375 (1992). For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Respondeat superior principles used to analyze coverage question. — Respondeat superior principles were used to analyze a coverage question under a Georgia Interlocal Risk Management Agency agreement as the statutory language and coverage language was similar to that used by Georgia courts in applying the theory of respondeat superior. Ga. Interlocal Risk Mgmt. Agency v. Godfrey, 273 Ga. App. 77, 614 S.E.2d 201 (2005).

Police trainee not "member." — Police trainee was not covered by a Georgia Interlocal Risk Management Agency agreement when the trainee obtained a police car to drive to work the next day, used the car to stop a victim, and robbed and murdered the victim for the purely personal reason of obtaining money to pay a drug dealer. Ga. Interlocal Risk Mgmt. Agency v. Godfrey, 273 Ga. App. 77, 614 S.E.2d 201 (2005).

Cited in CSX Transp., Inc. v. Garden City, 196 F. Supp. 2d 1288 (S.D. Ga. 2002).

36-85-2. Formation; functions; counties and municipalities as separate classes; agreements creating agencies; files of administrator are sole property of agency.

(a) A group of municipalities or a group of counties may execute an intergovernmental contract among themselves to form and become members of an interlocal risk management agency. After an interlocal risk management agency has been formed, any municipality or county may, subject to the bylaws and requirements of such agency, become a member and, through participation in the agency, may:

(1) Pool its general liability risks in whole or in part with those of other municipalities or counties;

(2) Pool its motor vehicle liability risks in whole or in part with those of other municipalities or counties;

(3) Pool its property damage risks in whole or in part with those of other municipalities or counties; or

(4) Jointly purchase general liability, motor vehicle liability, or property damage insurance with other municipalities or counties participating in and belonging to the interlocal risk management agency, the participating municipalities or counties to be coinsured under a master policy or policies with the total premium apportioned among such participants.

(b) For the purposes of this chapter, municipalities and counties shall be deemed to constitute separate classes, and no member of any one such class shall join with a member of another class for the purpose of creating an interlocal risk management agency. There shall be only one interlocal risk management agency established for each class; provided, however, if the Commissioner determines that there are special or unique circumstances or needs of a group of counties or municipalities which justify the establishment of an additional interlocal risk management agency or agencies, he may authorize the establishment of such additional agency or agencies. Each agency may establish such group self-insurance funds as may be authorized by the Commissioner of Insurance.

(c) All arrangements and agreements made under the authority of this chapter shall be in writing. A municipality or county may become a member of an interlocal risk management agency by the adoption of a resolution or ordinance by the governing authority of the municipality or county. The interlocal risk management agency shall operate under such name and style as shall be provided in the intergovernmental contract creating such agency and shall have the power to bring and defend actions in all courts.

(d) All books, records, and files maintained by any administrator of any fund established by the agency, including but not limited to audit data and all active and inactive claim files, shall at all times be the sole property of the agency and shall be surrendered immediately to the agency upon demand. (Code 1981, § 36-85-2, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 2.)

36-85-3. Board of trustees.

Each intergovernmental contract establishing an intergovernmental risk management agency shall provide for a board of trustees which shall govern the agency. Such board shall be authorized to administer the agency in accordance with the provisions of the intergovernmental contract establishing the agency and shall be authorized to adopt such bylaws, rules, and regulations as may be necessary or desirable in administering such agency. (Code 1981, § 36-85-3, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-4. Agency not an insurer.

An interlocal risk management agency created pursuant to this chapter is not an insurance company or an insurer under Title 33, and the development and administration by such agency of one or more group self-insurance funds shall not constitute doing business as an insurer. (Code 1981, § 36-85-4, enacted by Ga. L. 1986, p. 1496, § 1.)

JUDICIAL DECISIONS

Coverage agreement with Georgia Interlocal Risk Management Agency excluded uninsured and underinsured motorist protection. — Court of appeals correctly determined that no statute required that a city's agreement with the Georgia Interlocal Risk Management Agency (GIRMA) had to meet the uninsured and underinsured motorist coverage requirements that an insurance policy issued by an insurer had to meet pursuant to O.C.G.A. § 33-7-11 because the General Assembly explicitly declared that GIRMA was not an insurer; the city's agreement with GIRMA was limited to its express terms and did not include underinsured motorist protection. Godfrey v. Ga. Interlocal Risk Mgmt. Agency, 290 Ga. 211, 719 S.E.2d 412 (2011).

Cited in Adams v. Perdue, 199 Ga. App. 476, 405 S.E.2d 305 (1991).

36-85-5. Certificate of authority; application.

(a) No interlocal risk management agency shall establish a group self-insurance fund or funds until such agency has been issued a certificate of authority by the Commissioner of Insurance as provided in this Code section and under such rules and regulations as the Commissioner may promulgate to assure compliance with this chapter.

(b) The Commissioner shall not be authorized to issue any certificate of authority pursuant to this Code section prior to April 30, 1987. Any application for a certificate of authority pursuant to this Code section which is filed prior to March 1, 1987, shall be updated by the applicant in order to comply with any statute, rule, or regulation which may be promulgated or enacted prior to the issuance of the certificate of authority.

(c) When applying for a certificate of authority, an interlocal risk management agency shall file with the Commissioner an application setting forth:

(1) The name of the agency;

(2) The location of the agency's principal office;

(3) The names and addresses of the members of the agency;

(4) The names and addresses of the members of each fund;

(5) The name and address of a Georgia resident designated and appointed as each fund's proposed registered agent for service of process in this state;

(6) The names and addresses of the members of the board of trustees of the agency;

(7) A copy of the bylaws of the agency;

(8) A copy of the intergovernmental contract establishing the agency;

(9) A copy of the agreement or agreements establishing each fund;

(10) A copy of any agreements between the agency, any fund of the agency, and any administrator of a fund;

(11) A statement of the financial condition of the agency and each fund of the agency listing all of their assets and liabilities as of the end of the last preceding month prior to the date of the application on such a form as may be prescribed by the Commissioner;

(12) A copy of each contract, endorsement, and application form proposed to be issued or used in connection with each fund. Such contracts, endorsements, applications, or revisions thereto shall be filed with and approved by the Commissioner prior to their use; and

(13) A copy of the rates, rating systems, and rules proposed to be used in connection with each fund. Such rates, rating systems, rules, and any revisions thereto shall be filed with and approved by the Commissioner prior to their use.

(d) A fund authorized by this chapter may be established by an agency only if the agency has enrolled members which:

(1) For each motor vehicle liability and general liability fund shall generate an annual gross premium of not less than $300,000.00;

(2) For each property damage fund shall generate an annual gross premium of not less than $200,000.00;

(3) For each fund which includes motor vehicle liability or general liability with property damage shall generate an annual gross premium of not less than $500,000.00; or

(4) For each fund which includes motor vehicle liability, general liability, and property damage shall generate an annual gross premium of not less than $800,000.00. (Code 1981, § 36-85-5, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 3.)

36-85-6. Approval of certificate; renewal.

(a) The Commissioner shall examine the application made under Code Section 36-85-5 to determine whether the agency and any established fund will be able to comply with this chapter and applicable rules and regulations. If the Commissioner finds that the agency and any

established fund are capable of complying with such requirements, he shall issue a certificate of authority to the agency.

(b) If the Commissioner refuses to issue a certificate of authority, he shall issue an order setting forth the reasons for refusal and forward it to the agency. A copy of the order shall be sent to each member of the fund.

(c) Except as otherwise provided in subsection (b) of Code Section 36-85-5, the Commissioner shall approve or disapprove the application for a certificate of authority within 60 days of receipt by him of the application and all of the supporting information requested.

(d) The Commissioner may refuse to issue or renew or may suspend or revoke the certificate of authority of any agency, in accordance with Code Section 36-85-12, for failure of the agency to comply with any provision of this chapter or with any of the rules, regulations, or orders of the Commissioner issued pursuant thereto.

(e) The certificate shall be renewed annually in accordance with rules and regulations promulgated by the Commissioner. (Code 1981, § 36-85-6, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-7. Funds to be maintained.

Each fund formed pursuant to this chapter shall possess and thereafter maintain minimum surplus in an amount such as the Commissioner may reasonably establish or subsequently require for the protection of the members. The Commissioner may authorize a fund to maintain a deposit with the Commissioner consisting of securities eligible for deposit by domestic insurance companies in accordance with Chapter 12 of Title 33 or, for a period not to exceed 60 months, to post a surety bond in lieu of maintaining the minimum surplus required by this Code section. (Code 1981, § 36-85-7, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-8. Investment of assets.

The investable assets of a fund may be invested in securities or other investments permitted by the laws of this state for the investment of assets constituting the legal reserves of property and casualty insurance companies or in such other securities or investments as the Commissioner may permit such insurers to invest their funds under Title 33. Such investments shall be subject to the same terms, conditions, and limitations which apply to property and casualty insurance companies under Title 33. (Code 1981, § 36-85-8, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-9. Local government liability for funds.

Each county or municipality shall be jointly and severally liable for all legal obligations of a fund which arise out of an event which occurred while such county or municipality was a member of such fund; provided, however, that a fund shall not assume a risk greater than an amount to be determined by the Commissioner; and provided, further, that this legal obligation may be enforced by an assessment against such member as provided in the bylaws of the agency. (Code 1981, § 36-85-9, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-10. Contracts between agency and administrator.

(a) If an agency contracts with an administrator, the agency and the administrator must enter into a written agreement which shall be subject to review and approval by the Commissioner in accordance with this Code section and which shall contain at least the following:

(1) A contractual provision obligating the administrator to obtain and maintain such bonds, deposits, or insurance coverage as may be required to be maintained by this chapter; and

(2) A requirement that errors and omissions coverage or other appropriate liability insurance in an amount which is not less than that specified by the rules and regulations of the Commissioner be maintained at all times by the administrator.

(b) The terms of any such agreement shall be reasonable and equitable, and the agreement and any amendments thereto shall be filed with the Commissioner at least 30 days prior to their use. Any such agreement and any and all amendments thereto which have not been specifically disapproved by the Commissioner within 30 days after the filing thereof shall be deemed to be approved.

(c) A copy of the agreement and any and all amendments thereto shall be furnished to each agency or fund member upon request. (Code 1981, § 36-85-10, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-11. Fidelity bond and errors and omissions insurance; administrators to maintain office in state.

(a) The Commissioner shall require each administrator to have and maintain a fidelity bond in an amount which the Commissioner deems appropriate but which is not less than $100,000.00.

(b) Errors and omissions coverage or other appropriate liability insurance in an amount which is not less than that specified by the rules and regulations of the Commissioner shall be maintained at all

times by an administrator of a fund; and a certificate by the insurer or other appropriate evidence of such coverage shall be filed with the Commissioner by the fund.

(c) Each administrator shall maintain an office in this state for the payment, processing, and adjustment of the claims of the fund or funds which it represents. (Code 1981, § 36-85-11, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-12. Revocation, suspension, or refusal to renew certificate of authority; hearing; voluntary dissolution of fund.

(a) The Commissioner may revoke, suspend, or refuse to issue or renew the certificate of authority of any agency when and if, after investigation, he finds that:

(1) Any certificate of authority issued to the agency was obtained by fraud;

(2) There was any material misrepresentation in the application for the certificate of authority;

(3) The agency, any fund established by the agency, the administrator of a fund, or any marketing representative has otherwise shown itself to be untrustworthy or incompetent;

(4) The agency, any fund established by the agency, the administrator of a fund, or any marketing representative has violated any of the provisions of this chapter or the rules and regulations of the Commissioner promulgated pursuant to this chapter;

(5) The agency, any fund established by the agency, or the administrator of a fund has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys which belong to a member or a person otherwise entitled thereto and which have been entrusted to the agency, fund, or administrator in its fiduciary capacities; or

(6) The agency or any fund established by the agency is found to be in an unsound condition or in such condition as to render its future transaction of business in this state hazardous to its members.

(b) Before the Commissioner shall revoke, suspend, or refuse to issue or renew the certificate of authority of any agency, he shall give the agency an opportunity to be fully heard and to introduce evidence in its behalf. In lieu of revoking, suspending, or refusing to issue or renew the certificate of authority of any agency for any of the causes enumerated in this Code section, after hearing as provided in this Code section, the Commissioner may place the fund and its administrator on probation

for a period of time not to exceed one year when, in his judgment, he finds that the public interest and the interests of the fund's members would not be harmed by the continued operation of the fund. At any hearing provided for by this Code section, the Commissioner or his designee shall have authority to administer oaths to witnesses. Any witness testifying falsely after taking an oath commits the offense of perjury.

(c) No fund shall be voluntarily dissolved or otherwise voluntarily cease to function unless:

(1) Written approval is first obtained from the Commissioner; and

(2) The Commissioner determines that all claims and other legal obligations of the fund have been paid or that adequate provisions for such payment have been made. (Code 1981, § 36-85-12, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-13. Exemption from state and local taxes and fees.

Interlocal risk management agencies and funds established by such agencies shall be exempt from state and local taxes and fees. (Code 1981, § 36-85-13, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-14. Periodic examinations.

The Commissioner shall have the authority to require and conduct periodic examinations to verify the solvency of funds in the same manner and under the same conditions as insurers are examined under Chapter 2 of Title 33. (Code 1981, § 36-85-14, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-15. Fund deficiencies; assessments upon members; liquidation of fund.

(a) If the assets of a fund are at any time insufficient to enable a fund to discharge its legal liabilities and other obligations and to maintain the reserves and surplus required of it under this chapter, the agency shall forthwith make up the deficiency or levy an assessment upon the members of the fund for the amount needed to make up the deficiency.

(b) If the agency fails to make up the deficiency or to make the required assessment of the fund members within 30 days after the Commissioner orders it to do so or if the deficiency is not fully made up within 60 days after the date on which any such assessment is made or within such longer period of time as may be specified by the Commissioner, the fund shall be deemed to be insolvent and shall be proceeded against in the same manner as are domestic insurers under Chapter 37

of Title 33; and the Commissioner shall have the same powers and limitations in such proceedings as are provided under that chapter, except as otherwise provided for in this chapter.

(c) If the liquidation of a fund is ordered, an assessment shall be levied upon its members for such an amount as the Commissioner determines to be necessary to discharge all liabilities of the fund, including the reasonable costs of liquidation. (Code 1981, § 36-85-15, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-16. Rules and regulations.

The Commissioner shall have authority to promulgate rules and regulations to effectuate the provisions of this chapter. (Code 1981, § 36-85-16, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-17. Hearings.

Any party which is aggrieved by any act, determination, order, or any other action of the Commissioner taken pursuant to this chapter may request a hearing before the Commissioner or otherwise proceed in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 36-85-17, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-18. Excess loss funding program required.

(a) An interlocal risk management agency shall maintain at all times an excess loss funding program acceptable to the Commissioner. An excess loss funding program may consist of excess insurance, self-funding from unobligated surplus of a fund, any combination of the foregoing, or any other funding program acceptable to the Commissioner.

(b) The excess loss funding program of an agency shall be approved by the Commissioner as a condition to the issuance and maintenance of a certificate of authority of any agency which establishes a fund or funds authorized pursuant to this article. An agency may be permitted to purchase excess insurance:

(1) From insurers authorized to transact business in this state; or

(2) From approved surplus lines carriers. (Code 1981, § 36-85-18, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 4.)

36-85-19. Audits of funds.

Each fund established under this chapter shall have an annual audit of its books and accounts performed by a certified public accountant.

Such audit shall be conducted in accordance with generally accepted accounting principles. A copy of such audit shall be made available to fund members. (Code 1981, § 36-85-19, enacted by Ga. L. 1986, p. 1496, § 1.)

36-85-20. Exercise of authority not provision of liability insurance; sovereign immunity.

The exercise by a municipality or county of the authority provided in this chapter shall not constitute the provision of liability insurance protection under Article I, Section II, Paragraph IX of the Constitution of the State of Georgia. The participation by a municipality or county as a member of an agency authorized by this chapter shall not constitute the obtaining of liability insurance and no sovereign immunity shall be waived on account of such participation. (Code 1981, § 36-85-20, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 5.)

Law reviews. — For article, "Local Government Tort Liability: the Summer of '92," see 9 Ga. St. U. L. Rev. 405 (1993).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 36-85-20 conflicts with Ga. Const., 1983, Art. I, Sec. II, Para. IX, as the statute read prior to the 1990 amendment, and was therefore void. Hiers v. City of Barwick, 262 Ga. 129, 414 S.E.2d 647 (1992).

County's participation in an interlocal risk management plan did not constitute liability insurance for the purpose of waiving the county's sovereign immunity to the extent of the plan's coverage. Gilbert v. Richardson, 264 Ga. 744, 452 S.E.2d 476 (1994).

Even though the 1991 amendment of Ga. Const. 1983, Art. I, Sec. II, Para. IX, eliminated the language under which O.C.G.A. § 36-85-20 was found unconstitutionally void, the revision did not resurrect the statute and, accordingly, the statute did not provide a basis for finding a county's participation in an interlocal risk management plan constituted a waiver of sovereign immunity. The county's purchase of such insurance agreement constituted the purchase of insurance under O.C.G.A. § 33-24-51(b) and the county waived the county's sovereign immunity to the extent of such coverage; reversing in part, Gilbert v. Richardson, 211 Ga. App. 795, 440 S.E.2d 684 (1994). Gilbert v. Richardson, 264 Ga. 744, 452 S.E.2d 476 (1994).

GIRMA allows waiver of sovereign immunity to extent of coverage. — Trial court erred in granting summary judgment to city and the officer involved in a car accident, based on the doctrine of sovereign immunity, since it has been held that the constitutional provision providing waiver of immunity to the extent of insurance applies to municipalities, that the nonwaiver of immunity provision of O.C.G.A. § 36-85-20 is unconstitutional, and that municipal coverage under a Georgia Interlocal Risk Management Agency (GIRMA) policy results in waiver of immunity to the extent of that coverage. Harden v. Burdette, 204 Ga. App. 733, 420 S.E.2d 626 (1992).

Cited in Sinkfield v. Pike, 201 Ga. App. 652, 411 S.E.2d 889 (1991).

CHAPTER 86

LOCAL GOVERNMENT EFFICIENCY

Sec.
36-86-1. Short title.
36-86-2. Legislative findings and determinations; purpose.
36-86-3. Definitions.
36-86-4. Local government efficiency grant program established; grant categories; rules and regulations; budget process; efficiency assessments.

Administrative rules and regulations. — Local government efficiency grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-5.

Law reviews. — For note on 1993 enactment of this Code chapter, see 10 Ga. St. U. L. Rev. 160 (1993).

36-86-1. Short title.

This chapter shall be known and may be cited as the "Local Government Efficiency Act." (Code 1981, § 36-86-1, enacted by Ga. L. 1993, p. 1574, § 1.)

36-86-2. Legislative findings and determinations; purpose.

(a) The General Assembly finds and determines that there is a pressing need for modernization and reorganization of local government service delivery programs in many parts of the state. Both increasing population and urbanization in some areas of the state, as well as relative population decreases in other areas of the state, together with modern developments in transportation, communication, information, and other service delivery equipment and systems have rendered obsolete many of the traditional local government territorial systems for delivery of local government services.

(b) In many cases the consolidation of local government units or the consolidation of local government service delivery programs can lead to increased efficiency in the delivery of local government services, thereby providing either enhanced service delivery, lower levels of taxation, or both. In other cases, however, existing territorial systems for local government service delivery already operate in an efficient and cost-effective manner.

(c) The purpose of this chapter is to provide incentives and requirements relating to consolidation of local government units and local government service delivery programs in those cases where such

consolidation will improve efficiency and cost effectiveness, without disturbing territorial arrangements which already operate in an efficient and cost-effective manner. (Code 1981, § 36-86-2, enacted by Ga. L. 1993, p. 1574, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, subsection designations were added to this Code section.

36-86-3. Definitions.

As used in this chapter, the term:

(1) "Local government unit" includes each county in the state, each municipality in the state, each consolidated government in the state, and each local authority in the state which operates any local government service delivery program but does not include local school systems.

(2) "Service" or "local government service" includes any and all services provided by a local government unit, including but not limited to the following:

(A) Law enforcement;

(B) Fire protection and fire safety;

(C) Road and street construction and maintenance;

(D) Public transportation;

(E) Water supply and distribution;

(F) Waste-water, sewage, and storm-water collection and disposal;

(G) Public housing;

(H) Public health services;

(I) Enforcement of building, housing, plumbing, and electrical codes and other similar codes;

(J) Parks and recreation systems;

(K) Planning and zoning;

(L) Solid waste management; and

(M) Electric or gas utility services. (Code 1981, § 36-86-3, enacted by Ga. L. 1993, p. 1574, § 1; Ga. L. 1995, p. 467, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "similar" was substituted for "similiar" in subparagraph (2)(I).

36-86-4. Local government efficiency grant program established; grant categories; rules and regulations; budget process; efficiency assessments.

(a) There is established within the Department of Community Affairs a local government efficiency grant program. Funds may be appropriated to such grant program by line item reference in any appropriations Act, and any funds so appropriated shall be used for the sole purpose of making grants to local governments for the following purposes:

(1) Conducting efficiency assessments to determine the need for and desirability of consolidation of local government units or local government service delivery programs, including privatization of such programs, or both;

(2) Planning for the consolidation of local government units or local government service delivery programs, including privatization of such programs, or both, when it has been determined that such consolidation is needed and desirable; and

(3) Implementing the consolidation of local government units or local government service delivery programs, including privatization of such programs, or both, where it has been determined that such consolidation is needed and desirable and a plan has been developed for carrying out the consolidation or furthering the efficiency and effectiveness of a single consolidated local government's service delivery programs.

(b) The Department of Community Affairs shall promulgate rules and regulations which shall provide for:

(1) Standards and procedures for local governments to make application for local government efficiency grant funds; and

(2) Standards and procedures for the awarding of local government efficiency grant funds, such standards to be consistent with the statement of legislative findings set out in Code Section 36-86-2.

(c) Funds appropriated for local government efficiency grants shall be subject to normal budgetary processes and controls, including the lapsing of unexpended and uncommitted funds at the end of each fiscal year.

(d) The Department of Community Affairs shall provide procedures and guidelines specifying the manner of conducting and the contents of the efficiency assessments that are authorized to be conducted under paragraph (1) of subsection (a) of this Code section.

(e) The efficiency assessments shall be conducted only for the purpose of providing the local government units with the cost savings and

efficiencies, if any, which could be achieved through consolidation of governmental units or service delivery programs or both. There shall be no requirement that local government units that elect to conduct an efficiency assessment be compelled to consolidate local government units or local government service delivery programs as a result of the findings of the efficiency assessment.

(f) No local government shall be required to undertake any of the studies necessary for carrying out the provisions of subsection (a) of this Code section unless funds are appropriated for the purposes of that subsection. (Code 1981, § 36-86-4, enacted by Ga. L. 1993, p. 1574, § 1; Ga. L. 1995, p. 10, § 36; Ga. L. 1995, p. 467, § 1.)

Administrative rules and regulations. — Local government efficiency grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-5-1.

RESEARCH REFERENCES

ALR. — Privatization of governmental services by state or local governmental agency, 65 ALR5th 1.

CHAPTER 87

PARTICIPATION IN FEDERAL PROGRAMS

Sec.
36-87-1. Legislative findings.
36-87-2. Authority of counties and municipal corporations to participate in programs; powers.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, this chapter, which was enacted as Chapter 86, containing Code Sections 36-86-1 and 36-86-2, was redesignated as Chapter 87, containing Code Sections 36-87-1 and 36-87-2.

36-87-1. Legislative findings.

Pursuant to Article III, Section VI, Paragraph II, subparagraph (a)(3) of the Constitution of Georgia, the General Assembly finds it to be in the public interest of the citizens of Georgia and a public purpose for counties and municipal corporations to be authorized to participate in certain federal programs. (Code 1981, § 36-87-1, enacted by Ga. L. 1993, p. 792, § 1.)

36-87-2. Authority of counties and municipal corporations to participate in programs; powers.

(a) Each county and municipal corporation of the State of Georgia is authorized to participate in federal programs which provide federal grants and federal loans for such purposes including but not limited to housing, transportation, and water and waste-water treatment and distribution purposes. Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to exercise the following powers:

(1) To expend revenues, but shall not impose any new form of taxation; and

(2) To contract:

(A) With the United States and its departments and agencies;

(B) With the State of Georgia and its departments, agencies, and authorities;

(C) With regional commissions, political subdivisions of the state, and public authorities of such subdivisions; and

(D) With private nonprofit entities organized for the purpose of providing services to persons of low and moderate income when

such entities are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986

when the exercise of such powers is necessary to comply with the conditions established by federal law and federal regulations for eligibility for participation in such federal programs.

(b)(1) Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to expend public funds and participate in community development block grant programs and other federal programs to construct facilities to carry out the following purposes:

(A) Providing day-care services primarily to the children of persons of low and moderate income;

(B) Providing services to elderly persons;

(C) Providing health education, literacy and English language instruction, mental health and disability services, legal assistance, emergency food, and medical assistance to low and moderate income persons; and

(D) Any combination of services authorized in this paragraph.

(2) Counties and municipalities are further authorized to carry out the purposes of this subsection by contracting with public agencies and nonprofit entities described in paragraph (2) of subsection (a) of this Code section.

(3) Any contracts, programs, projects, or expenditures of public funds authorized by this subsection which were entered into, carried out, undertaken, or made prior to April 5, 1994, are validated and confirmed.

(c) State agencies rating applications from counties and municipal corporations for federal funding of the construction of day-care facilities shall, to the extent allowed under applicable federal laws or regulations, give priority to those day-care centers located in or adjacent to industrial parks.

(d) Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to:

(1) Participate in federal and state programs which provide funds for job training, job research assistance, and workforce development programs;

(2) Accept and expend grant funds subject to such terms as may be required by the grantor, including the duty to reimburse the grantor for any funds not expended in accordance with such terms;

(3) Contract with public agencies and nonprofit entities described in paragraph (2) of subsection (a) of this Code section for the purpose of carrying out such programs; and

(4) Ratify any contracts, programs, projects, or expenditures of public funds authorized by this subsection which were entered into, carried out, undertaken, or made prior to July 1, 1997. (Code 1981, § 36-87-2, enacted by Ga. L. 1993, p. 792, § 1; Ga. L. 1994, p. 822, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1997, p. 696, § 1; Ga. L. 2005, p. 1484, § 1/HB 186; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2008, p. 181, § 21/HB 1216.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "April 5, 1994," was substituted for "the effective date of this subsection" in paragraph (b)(3), and "July 1, 1997" was substituted for "the effective date of this subsection" in paragraph (d)(4).

Pursuant to Code Section 28-9-5, in 2008, "commissions" was substituted for "commission" in subparagraph (a)(2)(C).

CHAPTER 88

ENTERPRISE ZONES

Sec.
36-88-1. Short title.
36-88-2. Legislative findings and intent; construction.
36-88-3. Definitions.
36-88-4. Available incentives; qualifying business; exemptions.
36-88-5. Designation of enterprise zones.
36-88-6. Criteria for enterprise zone.
36-88-7. Local ordinances' effect on enterprise zone.
36-88-8. Tax exemption.
36-88-9. Other tax incentives; reporting.
36-88-10. Time limitations.

Law reviews. — For article commenting on the enactment of this chapter, see 14 Ga. St. U. L. Rev. 191 (1997).

36-88-1. Short title.

This chapter shall be known and may be cited as the "Enterprise Zone Employment Act of 1997." (Code 1981, § 36-88-1, enacted by Ga. L. 1997, p. 1481, § 1.)

36-88-2. Legislative findings and intent; construction.

The General Assembly finds and determines that there is a need for revitalization in many areas of Georgia. Revitalization will improve geographic areas within cities and counties which are suffering from disinvestment, underdevelopment, and economic decline and will encourage private businesses to reinvest and rehabilitate such areas. The General Assembly recognizes that increased employment opportunities for the citizens of Georgia will assist in the implementation of welfare reform. It is the intent of the General Assembly that this chapter be liberally construed to accomplish these purposes. (Code 1981, § 36-88-2, enacted by Ga. L. 1997, p. 1481, § 1.)

36-88-3. Definitions.

As used in this chapter, the term:

(1) "Ad valorem tax" means property taxes levied for state, county, or municipal operating purposes but does not include property taxes imposed by school districts or property taxes imposed for general obligation debt.

(2) "Business enterprise" means any business engaged primarily in retail, manufacturing, warehousing and distribution, processing,

telecommunications, tourism, research and development industries, new residential construction, and residential rehabilitation.

(3) "Department" means the Department of Community Affairs.

(4) "Enterprise zone" means the geographic area designated pursuant to Code Section 36-88-5.

(5) "Full-time job equivalent" means a job or jobs with no predetermined end date, with a regular work week of 30 hours or more, and with the same benefits provided to similar employees.

(6) "Low-income and moderate-income individual" means a person currently:

(A) Unemployed or unemployed for three of the six months prior to the date of hire;

(B) Homeless;

(C) A resident of public housing;

(D) Receiving temporary assistance for needy families or who has received temporary assistance for needy families at any time during the 18 months previous to the date of hire;

(E) A participant in the Workforce Investment Act or who has participated in the Workforce Investment Act at any time during the 18 months previous to the date of hire;

(F) A participant in a job opportunity where basic skills are required or who has participated in such a job opportunity at any time during the 18 months previous to the date of hire;

(G) Receiving supplemental social security income; or

(H) Receiving food stamps.

(7) "New job" means employment for an individual created within an enterprise zone by a new or expanded qualified business or service enterprise at the time of the initial staffing of such new or expanded enterprise.

(8) "Qualified or qualifying business" means an employer that meets the requirements of Code Section 36-88-4 and other applicable requirements of this chapter.

(9) "Service enterprise" means an entity engaged primarily in finance, insurance, and real estate activity or activities listed under the Standard Industrial Classification (SIC) Codes 60 through 67 according to the Federal Office of Management and Budget Standard Industrial Classification Manual, 1987 edition, or engaged primarily in day-care activities.

(10) "Urban redevelopment plan" means a plan prepared and adopted pursuant to the requirements of Chapter 61 of this title. (Code 1981, § 36-88-3, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 1998, p. 128, § 36; Ga. L. 1999, p. 333, § 1; Ga. L. 2003, p. 818, § 1; Ga. L. 2004, p. 939, §§ 2, 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "Office" was substituted for "office" in paragraph (9).

Editor's notes. — Ga. L. 2004, p. 939, § 6, not codified by the General Assembly, provides that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2004.

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 186 (2003).

36-88-4. Available incentives; qualifying business; exemptions.

(a) The following incentives are available to qualifying business and service enterprises to encourage revitalization within enterprise zones:

(1) The enterprise zone property tax exemption provided in Code Section 36-88-8; and

(2) The occupational tax, regulatory fee, and business inspection fee abatement or reduction provided in Code Section 36-88-9.

(b) A qualifying business or service enterprise is an enterprise which increased employment by five or more new full-time job equivalents in an area designated as an enterprise zone and which provides additional economic stimulus in such zone. The quality and quantity of such additional economic stimulus shall be determined, on a case-by-case basis, by the local governing body or bodies that have designated the enterprise zone. Such business or service enterprise may be new, an expansion or reinvestment of an existing business or service enterprise, or a successor to such business or service enterprise. Whenever possible, 10 percent of such new employees shall be low-income or moderate-income individuals.

(c) Notwithstanding any provision of this Code section to the contrary, a local governing body or bodies creating an enterprise zone prior to January 1, 2000, may provide the exemptions and abatements as provided in this chapter to any qualifying business or service enterprise which employs at least 5,000 persons and which creates ten or more new full-time job equivalents that did not exist prior to July 1, 1997, provided such qualifying business or service enterprise provides economic stimulus to such zone and the quality and quantity of such stimulus is acceptable to the local governing body or bodies creating the enterprise zone. (Code 1981, § 36-88-4, enacted by Ga. L. 1997, p. 1481, § 1.)

36-88-5. Designation of enterprise zones.

A local governing body or bodies may designate one or more geographic areas as enterprise zones. In such enterprise zone, local ad valorem taxes, occupation taxes, license fees, and other local fees and taxes, except local sales and use taxes or any combination thereof, may be exempted or reduced from applying to qualified business and service enterprises in accordance with the provisions of this chapter. A joint resolution by a county and one or more municipalities may provide such exemptions for jointly designated enterprise zones. Any areas designated as an enterprise zone may be redesignated as an enterprise zone after the expiration of its initial term as an enterprise zone if the area continues to meet the criteria for an enterprise zone contained in this chapter. (Code 1981, § 36-88-5, enacted by Ga. L. 1997, p. 1481, § 1.)

36-88-6. Criteria for enterprise zone.

(a) In order to be designated as an enterprise zone, a nominated area shall meet at least three of the five criteria specified in subsections (b), (c), (d), (e), and (f) of this Code section. In determining whether an area suffers from poverty, unemployment, or general distress, the governing body shall use data from the most current United States decennial census and from other information published by the United States Bureau of the Census, the Federal Bureau of Labor Statistics, and the Georgia Department of Labor. In determining whether an area suffers from underdevelopment, the governing body shall use the data specified in subsection (e) of this Code section. The data shall be comparable in point or period of time and methodology employed.

(b) Pervasive poverty shall be evidenced by showing that poverty is widespread throughout the nominated area and shall be established by using the following criteria:

(1) The poverty rate shall be determined from the data in the most current United States decennial census prepared by the United States Bureau of the Census;

(2) For parcels within the nominated area, the parcels must be within or adjacent to a census block group where the ratio of income to poverty level for at least 15 percent of the residents shall be less than 1.0;

(3) Census geographic block groups with no population shall be treated as having a poverty rate which meets the standards of paragraph (2) of this subsection; and

(4) All parcels of a nominated area must abut and may not contain a noncontiguous parcel, unless such nonabutting parcel qualifies

separately under the criteria set forth under paragraph (2) of this subsection.

(c) Unemployment shall be evidenced by the use of data published by the Office of Labor Information Systems of the Georgia Department of Labor indicating that the average rate of unemployment for the nominated area for the preceding calendar year is at least 10 percent higher than the state average rate of unemployment or by evidence of adverse economic conditions brought about by significant job dislocation within the nominated area such as the closing of a manufacturing plant or federal facility.

(d) General distress shall be evidenced by adverse conditions within the nominated area other than those of pervasive poverty and unemployment. Examples of such adverse conditions include, but are not limited to, a high incidence of crime, abandoned or dilapidated structures, deteriorated infrastructure, and substantial population decline.

(e) Underdevelopment shall be evidenced by data indicating development activities, or lack thereof, through land disturbance permits, business license fees, building permits, development fees, or other similar data indicating that the level of development in the nominated area is lower than development activity within the local governing body's jurisdiction.

(f) General blight within the nominated area shall be evidenced by the inclusion of any portion of the nominated area in an urban redevelopment area as defined by paragraph (20) of Code Section 36-61-2 for which an urban redevelopment plan has been adopted by the affected governing bodies according to the requirements of Chapter 61 of this title. (Code 1981, § 36-88-6, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 1999, p. 81, § 36; Ga. L. 2004, p. 939, § 4; Ga. L. 2009, p. 132, § 1/HB 427; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "United States Bureau of the Census" for "Federal Bureau of the Census" in subsection (a), and revised language in paragraph (b)(1).

Editor's notes. — Ga. L. 2004, p. 939, § 6, not codified by the General Assembly, provides that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2004.

36-88-7. Local ordinances' effect on enterprise zone.

(a)(1) Each ordinance adopted by a local government possessing an approved enterprise zone, when applicable, shall provide encouragement and incentives to increase rehabilitation, renovation, restoration, improvement for new construction for housing and the economic viability and profitability of businesses and commerce located within such enterprise zones.

(2) Creation of an enterprise zone shall be consistent with the comprehensive plan or plans of the jurisdiction or jurisdictions designating the enterprise zone which plan or plans are adopted pursuant to Chapter 70 of this title.

(3) Each local government possessing an enterprise zone may review its ordinances to determine which ordinances may have a negative effect upon the rehabilitation, renovation, restoration, improvement, or new construction of housing, or the economic viability and profitability of businesses and commerce located within an enterprise zone. Such local government may waive, amend, or otherwise modify such ordinances so as to minimize such adverse effect.

(b) Nothing in this Code section shall authorize any local government to waive, amend, provide exceptions to or otherwise modify or alter any ordinance which is:

(1) Expressly required to implement or enforce any statutory provisions; or

(2) Designed to protect persons against discrimination on the basis of race, color, creed, national origin, sex, age, or handicap.

(c) Nothing in this Code section shall be construed so as to rescind the authority granted to local governments to create, maintain, and regulate enterprise zones pursuant to any local enterprise zone law in effect on July 1, 1997. (Code 1981, § 36-88-7, enacted by Ga. L. 1997, p. 1481, § 1.)

36-88-8. Tax exemption.

(a)(1) The governing body of a local government or governments creating an enterprise zone shall include in the creating ordinance a provision to exempt qualifying business and service enterprises from state, county, and municipal ad valorem taxes that would otherwise be levied on the qualifying business and service enterprises not to exceed the following schedule:

(A) One hundred percent of the property taxes shall be exempt for the first five years;

(B) Eighty percent of the property taxes shall be exempt for the next two years;

(C) Sixty percent of the property taxes shall be exempt for the next year;

(D) Forty percent of the property taxes shall be exempt for the next year; and

(E) Twenty percent of the property taxes shall be exempt for the last year.

(2) For any qualifying business or service enterprise, the schedule provided for in paragraph (1) of this subsection may begin in any year during which an area has an enterprise zone designation. Such tax exemption may continue even if the area's enterprise zone designation has terminated. A minimum of five new jobs must be maintained for a qualifying business or service enterprise to maintain eligibility for the tax exemption provided pursuant to this Code section.

(b) If the project consists of new residential construction, residential rehabilitation, or other rehabilitation of an existing structure and the value of the improvement exceeds the value of the land by a ratio of five to one, then the exemption schedule in subsection (a) of this Code section shall also apply whether or not the project is carried out by a qualifying business or service enterprise.

(c) In no event shall the value of the property tax exemptions granted to qualifying business and service enterprises within an enterprise zone created by a city, a county, or both, exceed 10 percent of the value of the property tax digest of the creating jurisdiction or jurisdictions. (Code 1981, § 36-88-8, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 1999, p. 333, § 2; Ga. L. 2004, p. 939, § 5.)

Cross references. — Tax credits for business enterprises in less developed areas, § 48-7-40.1.

Editor's notes. — Ga. L. 2004, p. 939, § 6, not codified by the General Assembly, provides that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2004.

36-88-9. Other tax incentives; reporting.

(a) In addition to other incentives, the local governing body or bodies creating an enterprise zone may include in the creating ordinance an exemption or abatement from occupation taxes, regulatory fees, building inspection fees, and other fees that would otherwise have been imposed on a qualifying business. Such governing bodies may grant any of these incentives either when the enterprise is initially created or by subsequent resolution making such incentives applicable to an existing enterprise zone.

(b) Local governments shall report designations of enterprise zones to the department, providing sufficient information to identify at a minimum the geographic boundaries of the zones, the specific fees and taxes to be exempted or abated, and the beginning and end dates of the designation period. The time and manner of reporting shall be determined by the department. (Code 1981, § 36-88-9, enacted by Ga. L. 1997, p. 1481, § 1.)

36-88-10. Time limitations.

An area designated as an enterprise zone shall remain in existence for ten years from the first day of the calendar year immediately following its designation as an enterprise zone. Municipal and county governments may enter into agreements with qualifying business or service enterprises in designated enterprise zones to provide for modification or termination of the tax and fee exemptions and abatements. Property tax incentives available to a qualified business or service enterprise in an enterprise zone shall remain in effect for the full ten-year period established by Code Section 36-88-8, regardless of the termination of the designation of the enterprise zone. (Code 1981, § 36-88-10, enacted by Ga. L. 1997, p. 1481, § 1.)

CHAPTER 89

HOMEOWNER TAX RELIEF GRANTS

Sec.
36-89-1. Definitions.
36-89-2. Appropriation; purpose.
36-89-3. Appropriation to specify amount and eligible assessed value; procedures.
36-89-4. Procedure for allotment; conditions of grant; taxpayer notice.
36-89-5. Administration; rules and regulations; excess funds.
36-89-6. Recovery of erroneous or illegal credit.

Code Commission notes. — Ga. L. 2000, p. 486, § 1 enacted a Chapter 89 of Title 36, consisting of Code Section 36-89-1. Pursuant to Code Section 28-9-5, in 2000, that Code section was redesignated as Code Section 36-80-20.

Editor's notes. — Ga. L. 1999, p. 273, § 1 enacted this chapter; however, Ga. L. 1999, p. 1267, § 1 also enacted a chapter originally designated as this chapter which was redesignated as Chapter 90 of Title 36.

Law reviews. — For note on 1999 enactment of this Code chapter, see 16 Ga. St. U. L. Rev. 177 (1999).

36-89-1. Definitions.

As used in this chapter, the term:

(1) "Applicable rollback" means a:

(A) Rollback of an ad valorem tax millage rate pursuant to subsection (a) of Code Section 48-8-91 in a county or municipality that levies a local option sales tax;

(B) Rollback of an ad valorem tax millage rate pursuant to subparagraph (c)(2)(C) of Code Section 48-8-104 in a county or municipality that levies a homestead option sales tax;

(C) Subtraction from an ad valorem millage rate pursuant to Code Section 20-2-334 in a local school system that receives a state school tax credit;

(D) Reduction of an ad valorem tax millage rate pursuant to the development of a service delivery strategy under Code Section 36-70-24; and

(E) Reduction of an ad valorem tax millage rate pursuant to paragraph (2) of subsection (a) of Code Section 33-8-8.3 in a county that collects insurance premium tax.

(2) "County millage rate" means the net ad valorem tax millage rate, after deducting applicable rollbacks, levied by a county for

county purposes and applying to qualified homesteads in the county, including any millage levied for those special districts reported on the 2004 ad valorem tax digest certified to and received by the state revenue commissioner on or before December 31, 2004, but not including any millage levied for purposes of bonded indebtedness and not including any millage levied on behalf of a county school district for educational purposes.

(3) "Eligible assessed value" means a certain stated amount of the assessed value of each qualified homestead in the state. The amount of the eligible assessed value for any given year shall be fixed in that year's General Appropriations Act.

(4) "Fiscal authority" means the individual authorized to collect ad valorem taxes for a county or municipality which levies ad valorem taxes.

(5) "Municipal millage rate" means the net ad valorem tax millage rate, after deducting applicable rollbacks, levied by a municipality for municipal purposes and applying to qualified homesteads in the municipality, including any millage levied for those special tax districts reported on the 2004 City and Independent School Millage Rate Certification certified to and received by the state revenue commissioner on or before December 31, 2004, but not including any millage levied for purposes of bonded indebtedness and not including any millage levied on behalf of an independent school district for educational purposes.

(6) "Qualified homestead" means a homestead qualified for any exemption, state, county, or school, authorized under Code Section 48-5-44.

(7) "School millage rate" means the net ad valorem tax millage rate, after deducting applicable rollbacks, levied on behalf of a county or independent school district for educational purposes and applying to qualified homesteads in the county or independent school district, not including any millage levied for purposes of bonded indebtedness and not including any millage levied for county or municipal purposes.

(8) "State millage rate" means the state millage levy. (Code 1981, § 36-89-1, enacted by Ga. L. 1999, p. 273, § 1; Ga. L. 2002, p. 1031, § 4; Ga. L. 2005, p. 138, § 1/HB 116; Ga. L. 2006, p. 72, § 36/SB 465.)

Editor's notes. — Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2005, p. 138, § 3/HB 116, not codified by the General Assembly, provides that the 2005 amendment applies to all taxable years beginning on or after January 1, 2005.

36-89-2. Appropriation; purpose.

In each year, the General Assembly shall appropriate funds for homeowner tax relief grants to counties, municipalities, and county or independent school districts in order to provide for more effective regulation and management of the finance and fiscal administration of the state and pursuant to and in furtherance of the provisions of Article III, Section IX, Paragraph II(c) of the Constitution; Article VII, Section III, Paragraph III of the Constitution; Article VIII, Section I, Paragraph I of the Constitution; and other provisions of the Constitution. (Code 1981, § 36-89-2, enacted by Ga. L. 1999, p. 273, § 1; Ga. L. 2002, p. 1031, § 5; Ga. L. 2003, p. 665, § 45; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

Editor's notes. — Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 233 (2003).

36-89-3. Appropriation to specify amount and eligible assessed value; procedures.

(a) In the fiscal year ending on June 30, 2009, the General Assembly shall appropriate to the Department of Revenue funds to provide homeowner tax relief grants to counties, municipalities, and county or independent school districts. When funds are so appropriated, the General Appropriations Act shall specify the amount appropriated and the eligible assessed value of each qualified homestead in the state for the specified tax year, which eligible assessed value shall, subject to annual appropriation by the General Assembly, be not less than that specified in the Fiscal Year 2004 General Appropriations Act. If for any reason the amount appropriated in the General Appropriations Act is insufficient to fund the eligible assessed value stated in the General Appropriations Act, the amount appropriated may be adjusted in amendments to the General Appropriations Act. If the amount appropriated in the General Appropriations Act is sufficient to fund the eligible assessed value stated in the General Appropriations Act, that amount shall not be reduced or withdrawn for any reason.

(b) In the fiscal year ending on June 30, 2009, the General Assembly shall appropriate to the Department of Revenue funds to provide homeowner tax relief grants to counties, municipalities, and county or independent school districts. When funds are so appropriated, the supplemental appropriation bill shall specify the amount appropriated

and the eligible assessed value of each qualified homestead in the state for the specified tax year. If for any reason the amount appropriated in the supplemental appropriation bill is insufficient to fund the eligible assessed value stated in the supplemental appropriation bill, the amount appropriated is authorized to be, but is not required to be, adjusted in the General Appropriations Act for the next succeeding fiscal year. If the amount appropriated in the General Appropriations Act is sufficient to fund the eligible assessed value stated in the General Appropriations Act, that amount shall not be reduced or withdrawn for any reason.

(c) Subject to the limitations of subsection (d) of this Code section, in each fiscal year beginning on or after July 1, 2009, the General Assembly shall appropriate to the Department of Revenue funds to provide homeowner tax relief grants to counties, municipalities, and county or independent school districts. When funds are so appropriated, the supplemental appropriation bill shall specify the amount appropriated and the eligible assessed value of each qualified homestead in the state for the specified tax year. If for any reason the amount appropriated in the supplemental appropriation bill is insufficient to fund the eligible assessed value stated in the supplemental appropriation bill, the amount appropriated is authorized to be, but is not required to be, adjusted in the General Appropriations Act for the next succeeding fiscal year. If the amount appropriated in the General Appropriations Act is sufficient to fund the eligible assessed value stated in the General Appropriations Act, that amount shall not be reduced or withdrawn for any reason.

(d)(1) As used in this subsection, the term "budget report" means the budget report prepared pursuant to Code Section 45-12-74.

(2) For each fiscal year beginning on or after July 1, 2009, no funds shall be appropriated under subsection (c) of this Code section in any supplemental appropriation bill or General Appropriations Act unless the amount of estimated total revenues available for appropriation enumerated in the budget report for the current fiscal year exceeds the amount of estimated total revenues available for appropriation enumerated in the budget report for the most recent fiscal year in which homeowner tax relief grant funds were appropriated by 3 percent plus the percent change in the rate of economic inflation on individual taxpayers as determined under the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics of the United States Department of Labor.

(e) When funds are appropriated as provided in this Code section, each fiscal authority shall follow the procedures specified in Code Section 36-89-4. When funds are not appropriated, each fiscal authority shall not follow the procedures specified in Code Section 36-89-4 and

shall not include a notice on each tax bill regarding the unavailability of the credit. (Code 1981, § 36-89-3, enacted by Ga. L. 1999, p. 273, § 1; Ga. L. 2002, p. 1031, § 6; Ga. L. 2003, p. 665, § 46; Ga. L. 2009, p. 1, § 1/HB 143; Ga. L. 2010, p. 878, § 36/HB 1387.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (d)(2).

Editor's notes. — Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 233 (2003).

36-89-4. Procedure for allotment; conditions of grant; taxpayer notice.

(a)(1) When funds are appropriated as provided in Code Section 36-89-3, such grants shall be allotted to each county, municipality, and county or independent school district in the state as follows:

(A) Immediately following the actual preparation of ad valorem property tax bills, each county fiscal authority shall notify the Department of Revenue of the total amount of tax revenue which would be generated by applying the sum of the state and county millage rates to the eligible assessed value of each qualified homestead in the county. The total amount of actual tax credits, so calculated, given to all qualified homesteads in the county shall be the amount of the grant to that county;

(B) Immediately following the actual preparation of ad valorem property tax bills, each county or independent school district's fiscal authority shall notify the Department of Revenue of the total amount of tax revenue which would be generated by applying the school millage rate to the eligible assessed value of each qualified homestead in the county or independent school district. The total amount of actual tax credits, so calculated, given to all qualified homesteads in the county or independent school district shall be the amount of the grant to that county or independent school district; and

(C) Immediately following the actual preparation of ad valorem property tax bills, each municipality's fiscal authority shall notify the Department of Revenue of the total amount of tax revenue which would be generated by applying the municipal millage rate to the eligible assessed value of each qualified homestead in the municipality. The total amount of actual tax credits, so calculated, given to all qualified homesteads in the municipality shall be the amount of the grant to that municipality.

(2) Credit amounts computed under paragraph (1) of this subsection shall be applied to reduce the otherwise applicable tax liability on a dollar-for-dollar basis, but the credit granted shall not in any case exceed the amount of the otherwise applicable tax liability after the granting of all applicable homestead exemptions except for any homestead exemption under Article 2A of Chapter 8 of Title 48, the "Homestead Option Sales and Use Tax Act," as amended, and after the granting of all applicable millage rollbacks.

(b) The grant of funds to each county shall be conditioned on the county's fiscal authority reducing each qualified homestead's otherwise applicable liability for county taxes for county purposes by a credit amount calculated in subparagraph (a)(1)(A) of this Code section.

(c) The grant of funds to each county or independent school district shall be conditioned on the county or independent school district's fiscal authority reducing each qualified homestead's otherwise applicable liability for school taxes by a credit amount calculated in subparagraph (a)(1)(B) of this Code section.

(d) The grant of funds to each municipality shall be conditioned on the municipality's fiscal authority reducing each qualified homestead's otherwise applicable liability for municipal taxes by a credit amount calculated in subparagraph (a)(1)(C) of this Code section.

(e) Each fiscal authority shall show the credit amount on the tax bill, together with a prominent notice in substantially the following form: "This reduction in your bill is the result of homeowner's tax relief enacted by the Governor and the General Assembly of the State of Georgia." (Code 1981, § 36-89-4, enacted by Ga. L. 1999, p. 273, § 1; Ga. L. 2000, p. 424, § 1; Ga. L. 2002, p. 1031, § 7.)

Editor's notes. — Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

36-89-5. Administration; rules and regulations; excess funds.

(a) The state revenue commissioner shall administer this chapter and shall adopt rules and regulations for the administration of this chapter, including specific instructions to local governments. The state revenue commissioner may adopt procedures for partial or installment distribution of grants when the commissioner determines that a full distribution will only result in the necessity of return of funds under subsection (b) of this Code section.

(b) If any excess funds remain from the funds granted to any county, municipality, or county or independent school district under this chapter, after the county, municipality, or county or independent school

district complies with the credit requirements of Code Section 36-89-4, such excess funds shall be returned by the county, municipality, or county or independent school district to the Department of Revenue. (Code 1981, § 36-89-5, enacted by Ga. L. 1999, p. 273, § 1; Ga. L. 2002, p. 1031, § 8; Ga. L. 2008, p. 324, § 36/SB 455.)

Editor's notes. — Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

36-89-6. Recovery of erroneous or illegal credit.

Any credit under this chapter which is erroneously or illegally granted shall be recoverable by the political subdivision granting such credit in the same manner as any other delinquent tax. (Code 1981, § 36-89-6, enacted by Ga. L. 1999, p. 273, § 1.)

CHAPTER 90

LOCAL GOVERNMENT CABLE FAIR COMPETITION

Sec.
36-90-1. Short title.
36-90-2. Definitions.
36-90-3. Notifications to private providers before authorizing public provider; feasibility analysis and specific findings required; components of business plan; public hearings; requirements of ordinance or resolution.
36-90-4. Accounting methods regarding the cost of providing service; cross-subsidization prohibited.
36-90-5. Franchise agreements.
36-90-6. Price or rate charges by public providers.
36-90-7. Open meetings and records.
36-90-8. Immunity of local governments from antitrust liability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, this chapter, originally designated as Chapter 89 of Title 36, was redesignated as Chapter 90 of Title 36.

Law reviews. — For note on 1999 enactment of this Code chapter, see 16 Ga. St. U. L. Rev. 183 (1999).

36-90-1. Short title.

This chapter shall be known and may be cited as the "Local Government Cable Fair Competition Act of 1999." (Code 1981, § 36-90-1, enacted by Ga. L. 1999, p. 1267, § 1.)

36-90-2. Definitions.

As used in this chapter, the term:

(1) "Authorization" means the official act of a franchising authority to allow a public provider to deliver service.

(2) "Cable service" means:

(A) The one-way transmission to subscribers of (i) video programming or (ii) other programming service; and

(B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(3) "Capital costs" means all costs of providing a service which are capitalized in accordance with generally accepted governmental accounting principles.

(4) "Cross-subsidization" or "cross-subsidize" means the payment of any item of direct or indirect costs of providing a service which is not accounted for in the full cost accounting of providing the service.

(5) "Direct costs" means those expenses of a public provider which are directly attributable to the provision of a service that would be eliminated if the provision of said service were discontinued.

(6) "FCC" means the Federal Communications Commission.

(7) "Franchising authority" means any governmental entity which is empowered by law to grant a franchise and which is also a public provider.

(8) "Full-cost accounting" means the accounting for all costs incurred by a public provider in providing a service, including all direct and indirect costs, as required by this chapter. In preparation of such accounting, a public provider shall utilize cost accounting standards promulgated by the federal Costs Accounting Standards Board of the federal Office of Management and Budget so as to assure that all direct and indirect costs are included.

(9) "Generally accepted governmental accounting principles" means the accounting standards promulgated from time to time by the Governmental Accounting Standards Board.

(10) "Indirect costs" means any costs identified with two or more services or other public provider functions and which are not directly identified with a single service. Indirect costs may include, but are not limited to, administration, accounting, personnel, purchasing, legal, and other staff or departmental support. Indirect costs shall be allocated to two or more services in proportion to the relative burden each respective service places upon the cost category.

(11) "Private provider" means any person, firm, partnership, corporation, or association offering service, other than a public provider.

(12) "Public provider" means any county, municipal corporation, or other political subdivision of the state which provides service; any authority or instrumentality acting on behalf of or for the benefit of any county, municipal corporation, or other political subdivision of the state which provides service; and any authority or instrumentality created by the state which provides service.

(13) "Service" means cable service provided by a private provider or a public provider.

(14) "Subscriber" means any private person lawfully receiving any cable service provided by a private or public provider by means of or in connection with a cable system. (Code 1981, § 36-90-2, enacted by Ga. L. 1999, p. 1267, § 1; Ga. L. 2004, p. 990, § 2.)

36-90-3. Notifications to private providers before authorizing public provider; feasibility analysis and specific findings required; components of business plan; public hearings; requirements of ordinance or resolution.

(a) Before a franchising authority may begin the authorization process of permitting a public provider to deliver service, the franchising authority must notify each private provider serving the targeted market that the franchising authority intends to begin the process of authorizing a public provider to provide cable service. The notice must state that the private provider is not meeting the present and future needs of the community and shall set forth each such unmet need separately and fully in order that the private provider may reasonably ascertain the scope and nature of the issues identified by the franchising authority. The franchising authority must allow each private provider 30 days to present a plan to address the identified needs not being met, including a reasonable period of time to implement the plan. Neither the notification nor response to the notification provided for in this subsection shall affect the franchise agreement between a private provider and a franchising authority.

(b) If the franchising authority does not accept the private provider's plan to address the identified issues submitted as provided in subsection (a) of this Code section, the franchising authority shall then conduct an independent feasibility analysis and require the public provider to prepare a business plan to provide service. Such business plan shall set forth assumptions and specific findings as to:

(1) The cable service market share to be obtained by the public provider over a four-year period;

(2) The programming service offerings;

(3) Reasonable projections, for a period of at least four years, of the revenue and the direct, indirect, and imputed operating costs of providing service;

(4) The equipment needed to provide the service;

(5) The source and adequacy of the total direct and indirect capital to construct and operate the proposed system;

(6) The repayment of the debt service, including the length of payback of the principal debt;

(7) A cost-benefit analysis that shows a range of assumptions relating to market penetration rates, subscription rates, operating costs, and capital outlay;

(8) Assumptions as to programming costs;

(9) Assumptions as to actual or potential competition from all other providers;

(10) The allocation of costs between the public provider and other municipal operations; and

(11) The ability to address the issues cited in the notice to the private providers specified in subsection (a) of this Code section.

(c) In order for the business plan provided for in subsection (b) of this Code section to be adopted and the process to move forward, the business plan shall include, at a minimum, the following components:

(1) The total homes passed, provided that such shall be certified by the appropriate official responsible for municipal tax or census;

(2) Cable service basic penetration, estimated subscribers, and total homes passed, provided that such shall be reflective of the market analysis and not presume a penetration achieved by the fourth year of operation in excess of 40 percent without full independent verification;

(3) The overall estimated revenue takeout per home, provided that the same shall not exceed by more than 5 percent the amount being achieved by the private provider as developed from such publicly available information as franchise fee reports;

(4) The estimated miles of cable plant, provided that such shall be determined based on an actual survey conducted by public works employees and certified as to method and findings by a responsible supervisor;

(5) The average construction cost per cable service subscriber or cable plant mile or both, provided that such shall be based on an estimate provided by an independent supplier; and

(6) A definitive plan for the servicing of any capital utilized to fund the construction and operation of the cable system, including a reasonable payback period at an interest rate reflective of the public market and the inherent risks of the business.

(d) Prior to granting the authorization to the public provider, the franchising authority shall conduct at least two public hearings held at least two weeks apart. The public provider shall publish its business plan in its entirety and provide a complete copy to each private provider at least 30 days before the first public hearing. Such notice shall state that the business plan prepared by the public provider is available for public inspection each business day prior to the authorization and shall state the location where such inspection may be made. Notice of the time, place, and date of each hearing shall be published in a newspaper of general circulation within the jurisdiction of the county or munici-

pality once a week for the two weeks preceding the week in which the hearing is to be held. In addition, the private provider shall be given two weeks' written notice of the proposed hearing.

(e) Any authorization by the franchising authority shall be by passage of an ordinance or resolution and must:

(1) Find that the public provider possesses satisfactory financial and technical capability to be a public provider;

(2) Set forth the terms and conditions with respect to franchise terms and conditions, conditions of access to public property, and pole attachment; and

(3) Adopt the business plan. (Code 1981, § 36-90-3, enacted by Ga. L. 1999, p. 1267, § 1; Ga. L. 2004, p. 990, § 3.)

36-90-4. Accounting methods regarding the cost of providing service; cross-subsidization prohibited.

On and after January 1, 2000, each public provider shall prepare and maintain records in accordance with generally accepted governmental accounting principles which record the full cost accounting of providing service. Such records shall show the amount and source of capital, including working capital, utilized in providing service. Nothing contained in this chapter shall preclude a public provider utilizing capital from any lawful source, including the public provider's general funds, provided that the reasonable cost of such capital is accounted for as a cost of providing the service. No public provider shall cross-subsidize the costs of providing service. A public provider shall impute into its indirect costs of providing service an amount for franchise fees, regulatory fees, occupation taxes, pole attachment fees, and ad valorem property taxes, calculated in the same manner as such amounts are calculated for any private provider paying such costs to the public provider in the same service area. (Code 1981, § 36-90-4, enacted by Ga. L. 1999, p. 1267, § 1.)

36-90-5. Franchise agreements.

(a) In providing service, a public provider shall not employ terms more favorable or less burdensome than those imposed by the public provider upon any private provider providing the same service within its jurisdiction with respect to franchise terms and conditions, conditions of access to public property, and pole attachment.

(b) A franchising authority shall not impose or enforce any local regulation on any private provider which is not also made applicable to any competing public provider, nor shall a franchising authority discriminate between a public provider and private provider.

(c) A public provider may not unreasonably withhold a request by a private provider to transfer, modify, or renew its existing franchise in accordance with the terms of the franchise and in accordance with the provisions of 47 U.S.C. Section 537, 47 U.S.C. Section 545, and 47 U.S.C. Section 546.

(d) In any action by a franchising authority to enforce any term or condition of a franchise agreement, a violation of this Code section by the public provider with respect to such respective term or condition shall be a defense in such action.

(e) Nothing contained in this Code section shall be interpreted to limit the authority of the public provider, as the franchising authority, to collect franchise fees, control and regulate its streets and public ways, or enforce its powers to provide for the public health, safety, and welfare. (Code 1981, § 36-90-5, enacted by Ga. L. 1999, p. 1267, § 1.)

36-90-6. Price or rate charges by public providers.

On and after January 1, 2000, a public provider shall offer service at a price or rate to each subscriber which is either (1) equal to or greater than the price or rate for comparable service of competing private providers or (2) equal to or greater than the incremental direct and indirect costs of providing service to such subscriber. If, however, such service is required by state or federal law or regulation to be offered as a subsidized service, the funds to cover any deficiency in such costs shall be identified in the full cost accounting of such service. (Code 1981, § 36-90-6, enacted by Ga. L. 1999, p. 1267, § 1.)

36-90-7. Open meetings and records.

All meetings and records of public providers of a service shall be subject to the Georgia public records and public meetings laws contained, respectively, in Article 4 of Chapter 18 of Title 50 and Chapter 14 of Title 50. (Code 1981, § 36-90-7, enacted by Ga. L. 1999, p. 1267, § 1.)

36-90-8. Immunity of local governments from antitrust liability.

The immunity from antitrust liability afforded to local governments by the provisions of Code Sections 36-65-1 and 36-65-2 shall not apply to public providers in the offering and providing of services as defined in this chapter; and public providers shall be subject to applicable antitrust liabilities, subject, however, to the provisions of the federal Local Government Antitrust Act of 1984, 15 U.S.C. Sections 34-36. (Code 1981, § 36-90-8, enacted by Ga. L. 1999, p. 1267, § 1.)

CHAPTER 91

PUBLIC WORKS BIDDING

Article 1

General Provisions

Sec.
36-91-1. Short title.
36-91-2. Definitions.

Article 2

Contracting and Bidding Requirements

36-91-20. Written contract required; advertising; competitive sealed bidding; timing of addendums; prequalification.
36-91-21. Competitive award requirements.
36-91-22. Exceptions; use of inmate labor; emergency situations.

Article 3

Bonds

Part 1

General Provisions

36-91-40. Approval and filing of bonds with treasurer.
36-91-41 through 36-91-45. Redesignated.

Part 2

Bid Bonds

36-91-50. Projects requiring bid bonds; revocation of bids; surety.
36-91-51. Cash in lieu of bid bonds; letters of credit.
36-91-52. Bid and bidder defined; withdrawal of bids for appreciable errors; resubmission.
36-91-53. Affiliated corporation defined; forfeit of security by affiliated corporation.
Sec.
36-91-54. Action on breach of bond.

Part 3

Performance Bonds

36-91-70. Requirement of performance bonds.
36-91-71. Acceptable substitutes for bond.
36-91-72. Action on performance bond.
36-91-73 through 36-91-75. Redesignated.

Part 4

Payment Bonds

36-91-90. Requirement for payment bonds.
36-91-91. Liability of contracting party to subcontractors for noncompliance.
36-91-92. Notice of commencement.
36-91-93. Rights of persons protected by payment bond or security deposit; governmental entity not a party.
36-91-94. Providing copy of bond or security deposit agreement.
36-91-95. Time limitation.

Article 4

Bidding for Government Works Projects

36-91-100. Definitions.
36-91-101. Authority to enter into contracts; costs; grants or loans; eminent domain.
36-91-102. Planning, finance, construction, acquisition, leasing, operation, and maintenance of projects; implementation; lobbying restrictions.

Cross references. — State, county, and municipal road systems, § 32-4-1 et seq.

ARTICLE 1
GENERAL PROVISIONS

RESEARCH REFERENCES

ALR. — Conspiracy or combination to prevent actual competition in bids for public work as affecting contract for the work or recovery therefor, 62 ALR 224.

Validity of contract for material patented or held in monopoly where letting to lowest bidder is required, 77 ALR 702.

Power of municipality to fix specific scale of wages or hours for employees of contractors or subcontractors for municipal contracts, 81 ALR 349; 129 ALR 763.

Differences in character or quality of materials, articles, or work as affecting acceptance of bid for public contract, 27 ALR2d 917.

Contract for personal services as within requirement of submission of bids as condition of public contract, 15 ALR3d 733.

Right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute, 33 ALR3d 397.

Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified contractors a percentage preference in determining lowest bid, 89 ALR4th 587.

36-91-1. Short title.

This chapter shall be known and may be cited as the "Georgia Local Government Public Works Construction Law." (Code 1981, § 36-91-1, enacted by Ga. L. 2001, p. 820, § 12.)

Cross references. — Contracts for public works, T. 13, C. 10.

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-1 as present Code Section 36-91-2.

Law reviews. — For article, "General Overview of Procurement Process," see 10 Ga. St. B.J. 12 (2005).

JUDICIAL DECISIONS

Mandamus. — Based on the Georgia legislature's explicitly stated intention in the Georgia Local Government Public Works Construction Law, O.C.G.A. § 36-91-1 et seq., that local laws and ordinances controlled the manner of the city's execution of and entry into contracts, a contractor was not entitled to a writ of mandamus requiring the city to execute a contract in the city's favor, as neither the mayor nor the city council exercised their discretionary authority to approve any award that might or might not have resulted from the competitive sealed proposals process. Duty Free Air & Ship Supply Co./Franklin Wilson Airport Concession, Inc. v. City of Atlanta, 282 Ga. 173, 646 S.E.2d 48 (2007).

36-91-2. Definitions.

As used in this chapter, the term:

(1) "Alternate bids" means the amount stated in the bid or proposal to be added to or deducted from the amount of the base bid or base

proposal if the corresponding change in project scope or alternate materials or methods of construction is accepted.

(2) "Base bid" or "base proposal" means the amount of money stated in the bid or proposal as the sum for which the bidder or proposer offers to perform the work.

(3) "Bid bond" means a bond with good and sufficient surety or sureties for the faithful acceptance of the contract payable to, in favor of, and for the protection of the governmental entity for which the contract is to be awarded.

(4) "Change order" means an alteration, addition, or deduction from the original scope of work as defined by the contract documents to address changes or unforeseen conditions necessary for project completion.

(5) "Competitive sealed bidding" means a method of soliciting public works construction contracts whereby the award is based upon the lowest responsive, responsible bid in conformance with the provisions of subsection (b) of Code Section 36-91-21.

(6) "Competitive sealed proposals" means a method of soliciting public works contracts whereby the award is based upon criteria identified in a request for proposals in conformance with the provisions of subsection (c) of Code Section 36-91-21.

(7) "Emergency" means any situation resulting in imminent danger to the public health or safety or the loss of an essential governmental service.

(8) "Governing authority" means the official or group of officials responsible for governance of a governmental entity.

(9) "Governmental entity" means a county, municipal corporation, consolidated government, authority, board of education, or other public board, body, or commission but shall not include any authority, board, department, or commission of the state, or a public transportation agency as defined by Chapter 9 of Title 32.

(10) "Payment bond" means a bond with good and sufficient surety or sureties payable to the governmental entity for which the work is to be done and intended for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the work provided for in the public works construction contract.

(11) "Performance bond" means a bond with good and sufficient surety or sureties for the faithful performance of the contract and to indemnify the governmental entity for any damages occasioned by a failure to perform the same within the prescribed time. Such bond

shall be payable to, in favor of, and for the protection of the governmental entity for which the work is to be done.

(12) "Public works construction" means the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property other than those projects covered by Chapter 4 of Title 32 or by Chapter 37 of Title 50. Such term does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property, or any energy savings performance contract or any improvements or installations performed as part of an energy savings performance contract.

(13) "Responsible bidder" or "responsible offeror" means a person or entity that has the capability in all respects to perform fully and reliably the contract requirements.

(14) "Responsive bidder" or "responsive offeror" means a person or entity that has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

(15) "Scope of project" means the work required by the original contract documents and any subsequent change orders required or appropriate to accomplish the intent of the project as described in the bid documents.

(16) "Scope of work" means the work that is required by the contract documents.

(17) "Sole source" means those procurements made pursuant to a written determination by a governing authority that there is only one source for the required supply, service, or construction item. (Code 1981, § 36-91-1, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-2, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 640, § 1/SB 146; Ga. L. 2012, p. 59, § 1/SB 113.)

The 2012 amendment, effective April 12, 2012, in paragraph (12), added "or by Chapter 37 of Title 50" at the end of the first sentence, and added ", or any energy savings performance contract or any improvements or installations performed as part of an energy savings performance contract" at the end of the last sentence.

ARTICLE 2

CONTRACTING AND BIDDING REQUIREMENTS

Administrative rules and regulations. — School facilities and capital outlay management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-5-4.

36-91-20. Written contract required; advertising; competitive sealed bidding; timing of addendums; prequalification.

(a) All public works construction contracts subject to this chapter entered into by a governmental entity with private persons or entities shall be in writing and on file and available for public inspection at a place designated by such governmental entity. Municipalities and consolidated governments shall execute and enter into contracts in the manner provided in applicable local legislation or by ordinance.

(b)(1) Prior to entering into a public works construction contract other than those exempted by Code Section 36-91-22, a governmental entity shall publicly advertise the contract opportunity. Such notice shall be posted conspicuously in the governing authority's office and shall be advertised in the legal organ of the county or by electronic means on an Internet website of the governmental entity or an Internet website identified by the governmental entity which may include the Georgia Procurement Registry as provided by Code Section 50-5-69.

(2) Contract opportunities that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least four weeks prior to the opening of the sealed bids or proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement.

(3) Contract opportunities that are advertised solely on the Internet shall be posted continuously for at least four weeks prior to the opening of sealed bids or proposals. Inadvertent or unintentional loss of Internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.

(4) Contract opportunities that will be awarded by competitive sealed bids shall have plans and specifications available on the first day of the advertisement and shall be open to inspection by the public. The plans and specifications shall indicate if the project will be awarded by base bid or base bid plus selected alternates and:

(A) A statement listing whether all anticipated federal, state, or local permits required for the project have been obtained or an indication of the status of the application for each such permit including when it is expected to be obtained; and

(B) A statement listing whether all anticipated rights of way and easements required for the project have been obtained or an indication of the status as to when each such rights of way or easements are expected to be obtained.

(5) Contract opportunities that will be awarded by competitive sealed proposals shall be publicly advertised with a request for proposals which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project.

(6) The advertisement shall include such details and specifications as will enable the public to know the extent and character of the work to be done.

(7) All required notices of advertisement shall also advise of any mandatory prequalification requirements or pre-bid conferences as well as any federal requirements pursuant to subsection (d) of Code Section 36-91-22. Any advertisement which provides notice of a mandatory pre-bid conference or prequalification shall provide reasonable advance notice of said conference or for the submittal of such prequalification information.

(c) Governmental entities are authorized to utilize any construction delivery method, provided that all public works construction contracts subject to the requirements of this chapter that:

(1) Place the bidder or offeror at risk for construction; and

(2) Require labor or building materials in the execution of the contract

shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals. Governmental entities shall have the authority to reject all bids or proposals or any bid or proposal that is nonresponsive or not responsible and to waive technicalities and informalities.

(d) No governmental entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72 hour period prior to the advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to readvertise as required by subsection (b) of this Code section.

(e) Bid and contract documents may contain provisions authorizing the issuance of change orders, without the necessity of additional requests for bids or proposals, within the scope of the project when appropriate or necessary in the performance of the contract. Change orders may not be used to evade the purposes of this article.

(f) Any governmental entity may, in its discretion, adopt a process for mandatory prequalification of prospective bidders or offerors; provided, however, that:

(1) Criteria for prequalification must be reasonably related to the project or the quality of work;

(2) Criteria for prequalification must be available to any prospective bidder or offeror requesting such information for each project that requires prequalification;

(3) Any prequalification process must include a method of notifying prospective bidders or offerors of the criteria for or limitations to prequalification; and

(4) Any prequalification process must include a procedure for a disqualified bidder to respond to his or her disqualification to a representative of the governmental entity; provided, however, that such procedure shall not be construed to require the governmental entity to provide a formal appeals procedure. A prequalified bidder or offeror can not be later disqualified without cause. (Code 1981, § 36-91-20, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 640, § 2/SB 146.)

Law reviews. — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

School board acted within the board's authority in furthering intent of § 36-91-21. — Trial court properly relied solely on the court's determination that an unsuccessful bidding contractor would unlikely prevail on the merits of the contractor's suit in denying the contractor's petition for an interlocutory injunction and vacation of the court's temporary restraining order as: (1) the school board acted within the board's powers in accepting, albeit late, the lowest bidder's list of subcontractors; and (2) the board was authorized to find that the bid provision requiring that a list of subcontractors be provided with a bid was immaterial and could be waived. R. D. Brown Contrs., Inc. v. Bd. of Educ. of Columbia County, 280 Ga. 210, 626 S.E.2d 471 (2006).

Mandamus. — Based on the Georgia legislature's explicitly stated intention in the Georgia Local Government Public Works Construction Law, O.C.G.A. § 36-91-1 et seq., that local laws and ordinances controlled the manner of the city's execution of and entry into contracts, a contractor was not entitled to a writ of mandamus requiring the city to execute a contract in the city's favor, as neither the mayor nor the city council exercised their discretionary authority to approve any award that might or might not have resulted from the competitive sealed proposals process. Duty Free Air & Ship Supply Co./Franklin Wilson Airport Concession, Inc. v. City of Atlanta, 282 Ga. 173, 646 S.E.2d 48 (2007).

36-91-21. Competitive award requirements.

(a) It shall be unlawful to let out any public works construction contracts subject to the requirements of this chapter without complying with the competitive award requirements contained in this Code section. Any contractor who performs any work of the kind in any other manner and who knows that the public works construction contract was let out without complying with the notice and competitive award requirements of this chapter shall not be entitled to receive any payment for such work.

(b) Any competitive sealed bidding process shall comply with the following requirements:

(1) The governmental entity shall publicly advertise an invitation for bids;

(2) Bidders shall submit sealed bids based on the criteria set forth in such invitation;

(3) The governmental entity shall open the bids publicly and evaluate such bids without discussions with the bidders; and

(4) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids; provided, however, that if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the public works construction contract, the governmental entity may negotiate with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(c)(1) In making any competitive sealed proposal, a governmental entity shall:

(A) Publicly advertise a request for proposals, which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project, as well as the relative importance of the evaluation factors;

(B) Open all proposals received at the time and place designated in the request for proposals so as to avoid disclosure of contents to competing offerors during the process of negotiations; and

(C) Make an award to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the governmental entity, taking into consideration the evaluation factors set forth in the request for proposals. The evaluation factors shall be the basis on which the award decision is

made. The contract file shall indicate the basis on which the award is made.

(2) As set forth in the request for proposals, offerors submitting proposals may be afforded an opportunity for discussion, negotiation, and revision of proposals. Discussions, negotiations, and revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers. In accordance with the request for proposals, all responsible offerors found by the governmental entity to have submitted proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations, and revisions. During the process of discussion, negotiation, and revision, the governmental entity shall not disclose the contents of proposals to competing offerors.

(d) Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

(e) Before commencing the work, any person who procures such public work by bidding or proposal shall make an oath in writing that he or she has not directly or indirectly violated subsection (d) of this Code section. The oath shall be filed by the officer whose duty it is to make the payment. If the contractor is a partnership, all of the partners and any officer, agent, or other person who may have represented or acted for them in bidding for or procuring the contract shall also make the oath. If the contractor is a corporation, all officers, agents, or other persons who may have acted for or represented the corporation in bidding for or procuring the contract shall make the oath. If such oath is false, the contract shall be void, and all sums paid by the governmental entity on the contract may be recovered by appropriate action.

(f) If any member of a governmental entity lets out any public works construction contract subject to the requirements of this article and receives, takes, or contracts to receive or take, either directly or indirectly, any part of the pay or profit arising out of any such contract, he or she shall be guilty of a misdemeanor.

(g) No public works construction contract with a governing authority shall be valid for any purpose unless the contractor shall comply with all bonding requirements of this chapter. No such contract shall be valid

if any governmental entity lets out any public works construction contract subject to the requirements of this chapter without complying with the requirements of this chapter. (Code 1981, § 36-91-21, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12.)

Law reviews. — For survey article on construction law, see 59 Mercer L. Rev. 55 (2007) and 60 Mercer L. Rev. 59 (2008). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 36-82-102 are included in the annotations for this Code section.

Applicability. — Since the highest bid for a town's construction project was less than $100,000.00, O.C.G.A. § 36-91-21 did not apply; also, while the winning bid was higher than another contractor's bid, the winning bid included more extensive work, consistent with the town's request and need; the awarding of the contract to the contractor's competitor was not improper. Griffin Bros., Inc. v. Town of Alto, 280 Ga. App. 176, 633 S.E.2d 589 (2006).

Mandamus. — Based on the Georgia legislature's explicitly stated intention in the Georgia Local Government Public Works Construction Law, O.C.G.A. § 36-91-1 et seq., that local laws and ordinances controlled the manner of the city's execution of and entry into contracts, a contractor was not entitled to a writ of mandamus requiring the city to execute a contract in the contractor's favor, as neither the mayor nor the city council exercised their discretionary authority to approve any award that might or might not have resulted from the competitive sealed proposals process. Duty Free Air & Ship Supply Co./Franklin Wilson Airport Concession, Inc. v. City of Atlanta, 282 Ga. 173, 646 S.E.2d 48 (2007).

Liability when payment bond not obtained. — Former O.C.G.A. § 36-82-102 provided that if a payment bond was not obtained, then the Atlanta Housing Authority should be liable to subcontractors who furnish labor, supplies, materials, or equipment to the contractor for any loss resulting to the subcontractor. B & B Elec. Supply Co. v. H.J. Russell Constr. Co., 166 Ga. App. 499, 304 S.E.2d 544 (1983) (decided under former O.C.G.A. § 36-82-102).

School board acted within the board's authority in furthering intent of § 36-91-21. — Trial court properly relied solely on the court's determination that an unsuccessful bidding contractor would unlikely prevail on the merits of the contractor's suit in denying the contractor's petition for an interlocutory injunction and vacation of the court's temporary restraining order as: (1) a school board acted within the board's powers in accepting, albeit late, the lowest bidder's list of subcontractors; and (2) the board was authorized to find that the bid provision requiring that a list of subcontractors be provided with a bid was immaterial and could be waived. R. D. Brown Contrs., Inc. v. Bd. of Educ. of Columbia County, 280 Ga. 210, 626 S.E.2d 471 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 36-91-21(f) is not an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

36-91-22. Exceptions; use of inmate labor; emergency situations.

(a) The requirements of this chapter shall not apply to public works construction projects, when the same can be performed at a cost of less than $100,000.00. Public works construction projects shall not be subdivided in an effort to evade the provisions of this chapter.

(b) Any governmental entity having a correctional institution shall have the power and authority to purchase material for and use inmate labor in performing public works construction projects; and in such cases, this chapter shall not apply. Any governmental entity may contract with a governmental entity having a correctional institution for the use of inmate labor from such institution and use the inmates in the performance of any public works construction project; and in such cases, this chapter shall not apply.

(c) In the event that the labor used or to be used in a public works construction project is furnished at no expense by the state or federal government or any agency thereof, the governing authority shall have the power and authority to purchase material for such public works construction project and use the labor furnished free to the governmental entity; and in such case, this chapter shall not apply.

(d) Where a public works construction contract involves the expenditure of federal assistance or funds, the receipt of which is conditioned upon compliance with federal laws or regulations regarding the procedures for awarding public works construction contracts, a governmental entity shall comply with such federal requirements and shall not be required to comply with the provisions of this chapter that differ from the federal requirements. The governmental entity shall provide notice that federal procedures exist for the award of such contracts in the advertisement required by subsection (b) of Code Section 36-91-20. The availability and location of such federal requirements shall be provided to any person requesting such information.

(e) The requirements of this chapter shall not apply to public works construction projects necessitated by an emergency; provided, however, that the nature of the emergency shall be described in the minutes of the governing authority. Any contract let by a county pursuant to this subsection shall be ratified, as soon as practicable, on the minutes of the governing authority, and the nature of the emergency shall be described therein.

(f) Except as otherwise provided in Chapter 4 of Title 32, the requirements of this chapter shall not apply to public works construction projects subject to the requirements of Chapter 4 of Title 32.

(g) The requirements of this chapter shall not apply to public works construction projects or any portion of a public works construction

project self-performed by a governmental entity. If the governmental entity contracts with a private person or entity for a portion of such project, the provisions of this chapter shall apply to any such contract estimated to exceed $100,000.00.

(h) The requirements of this chapter shall not apply to sole source public works construction contracts.

(i) The requirements of this chapter shall not apply to hospital authorities; provided, however, that a public works construction contract entered into by a hospital authority shall be subject to the requirements of this chapter if, in connection with such contract, the hospital authority either:

(1) Incurs indebtedness and secures such indebtedness by pledging amounts to be received by such authority from one or more counties or municipalities through an intergovernmental contract entered into in accordance with Code Section 31-7-85; or

(2) Receives funds from the state or one or more counties or municipalities for the purpose of financing a public works construction project, which moneys are not for reimbursement of health services provided. (Code 1981, § 36-91-22, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12.)

Law reviews. — For survey article on construction law, see 59 Mercer L. Rev. 55 (2007) and 60 Mercer L. Rev. 59 (2008). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Emergency exception. — City had not shown that a park project fell within the emergency exception under O.C.G.A. § 36-91-22(e); the city had not produced any minutes describing the nature of the emergency, a 1999 ordinance made no mention of an emergency, and a reference in a 2003 ordinance that described the 1999 ordinance as "emergency authorization" was not sufficient to prove an emergency. Jacks v. City of Atlanta, 284 Ga. App. 200, 644 S.E.2d 150 (2007), cert. denied, 2007 Ga. LEXIS 500 (Ga. 2007).

ARTICLE 3

BONDS

Part 1

General Provisions

36-91-40. Approval and filing of bonds with treasurer.

(a)(1) Any bid bond, performance bond, payment bond, or security deposit required for a public works construction contract shall be

approved and filed with the treasurer or the person performing the duties usually performed by a treasurer of the obligee named therein. At the option of the governmental entity, if the surety named in the bond is other than a surety company authorized by law to do business in this state pursuant to a current certificate of authority to transact surety business by the Commissioner of Insurance, such bond shall not be approved and filed unless such surety is on the United States Department of Treasury's list of approved bond sureties.

(2) Any bid bond, performance bond, or payment bond required by this Code section shall be approved as to form and as to the solvency of the surety by an officer of the governmental entity negotiating the contract on behalf of the governmental entity. In the case of a bid bond, such approval shall be obtained prior to acceptance of the bid or proposal. In the case of payment bonds and performance bonds, such approval shall be obtained prior to the execution of the contract.

(b) Whenever, in the judgment of the obligee:

(1) Any surety on a bid, performance, or payment bond has become insolvent;

(2) Any corporate surety is no longer certified or approved by the Commissioner of Insurance to do business in the state; or

(3) For any cause there are no longer proper or sufficient sureties on any or all of the bonds,

the obligee may require the contractor to strengthen any or all of the bonds or to furnish a new or additional bond or bonds within ten days. Thereupon, if so ordered by the obligee, all work on the contract shall cease unless such new or additional bond or bonds are furnished. If such bond or bonds are not furnished within such time, the obligee may terminate the contract and complete the same as the agent of and at the expense of the contractor and his or her sureties. (Code 1981, § 36-91-40, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12.)

36-91-41 through 36-91-45. Redesignated.

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Sections 36-91-41 through 36-91-45 as present Code Sections 36-91-50 through 36-91-54, respectively, and designated those Code sections as Part 2 of Article 3.

PART 2

BID BONDS

36-91-50. Projects requiring bid bonds; revocation of bids; surety.

(a) Bid bonds shall be required for all public works construction contracts subject to the requirements of this article with estimated bids or proposals over $100,000.00; provided, however, that a governmental entity may require a bid bond for projects with estimated bids or proposals of $100,000.00 or less.

(b) In the case of competitive sealed bids, except as provided in Code Sections 36-91-52 and 36-91-53, a bid may not be revoked or withdrawn until 60 days after the time set by the governmental entity for opening of bids. Upon expiration of this time period, the bid will cease to be valid, unless the bidder provides written notice to the governmental entity prior to the scheduled expiration date that the bid will be extended for a time period specified by the governmental entity.

(c) In the case of competitive sealed proposals, the governmental entity shall advise offerors in the request for proposals of the number of days that offerors will be required to honor their proposals; provided, however, that if an offeror is not selected within 60 days of opening the proposals, any offeror that is determined by the governmental entity to be unlikely of being selected for contract award shall be released from his or her proposal.

(d) If a governmental entity requires a bid bond for any public works construction contract, no bid or proposal for a contract with the governmental entity shall be valid for any purpose unless the contractor shall give a bid bond with good and sufficient surety or sureties approved by the governing authority. The bid bond shall be in the amount of not less than 5 percent of the total amount payable by the terms of the contract. No bid or proposal shall be considered if a proper bid bond or other security authorized in Code Section 36-91-51 has not been submitted. The provisions of this subsection shall not apply to any bid or proposal for a contract that is required by law to be accompanied by a proposal guaranty and shall not apply to any bid or proposal for a contract with any public agency or body which receives funding from the United States Department of Transportation and which is primarily engaged in the business of public transportation. (Code 1981, § 36-91-41, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-50, as redesignated by Ga. L. 2001, p. 820, § 12.)

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-50 as present Code Section 36-91-70.

36-91-51. Cash in lieu of bid bonds; letters of credit.

(a) In lieu of the bid bond provided for in Code Section 36-91-50, the governmental entity may accept a cashier's check, certified check, or cash in the amount of not less than 5 percent of the total amount payable by the terms of the contract payable to and for the protection of the governmental entity for which the contract is to be awarded.

(b) When the amount of any bid bond required under this article does not exceed $750,000.00, the governmental entity may, in its sole discretion, accept an irrevocable letter of credit issued by a bank or savings and loan association, as defined in Code Section 7-1-4, in the amount of and in lieu of the bond otherwise required under Code Section 36-91-50. (Code 1981, § 36-91-42, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-51, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 209, § 1/HB 134.)

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-51 as present Code Section 36-91-71.

36-91-52. Bid and bidder defined; withdrawal of bids for appreciable errors; resubmission.

(a) As used in this Code section, the term "bid" includes proposal and the term "bidder" includes offeror.

(b) Any governmental entity receiving bids subject to this article shall permit a bidder to withdraw a bid from consideration after the bid opening without forfeiture of the bid security if the bidder has made an appreciable error in the calculation of his or her bid and if:

(1) Such error in the calculation of his or her bid can be documented by clear and convincing written evidence;

(2) Such error can be clearly shown by objective evidence drawn from inspection of the original work papers, documents, or materials used in the preparation of the bid sought to be withdrawn;

(3) The bidder serves written notice upon the governmental entity which invited proposals for the work prior to the award of the contract and not later than 48 hours after the opening of bids, excluding Saturdays, Sundays, and legal holidays;

(4) The bid was submitted in good faith and the mistake was due to a calculation or clerical error, an inadvertent omission, or a typographical error as opposed to an error in judgment; and

(5) The withdrawal of the bid will not result in undue prejudice to the governmental entity or other bidders by placing them in a materially worse position than they would have occupied if the bid had never been submitted.

(c) In the event that an apparent successful bidder has withdrawn his or her bid as provided in subsection (b) of this Code section, action on the remaining bids should be considered as though the withdrawn bid had not been received. In the event the project is relet for bids, under no circumstances shall a bidder who has filed a request to withdraw a bid be permitted to resubmit a bid for the work.

(d) No bidder who is permitted to withdraw a bid pursuant to subsection (b) of this Code section shall for compensation supply any material or labor to, or perform any subcontract or other work agreement for, the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted. (Code 1981, § 36-91-43, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-52, as redesignated by Ga. L. 2001, p. 820, § 12.)

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-52 as present Code Section 36-91-72.

36-91-53. Affiliated corporation defined; forfeit of security by affiliated corporation.

(a) As used in this Code section, the term:

(1) "Affiliated corporation" means, with respect to any corporation, any other corporation related thereto:

(A) As a parent corporation;

(B) As a subsidiary corporation;

(C) As a sister corporation;

(D) By common ownership or control; or

(E) By control of one corporation by the other.

(2) The term "bid" includes proposals.

(b) In any case where two or more affiliated corporations bid for a contract under this Code section and any one or more of such affiliated corporations subsequently rescind or revoke their bid or bids in favor of another such affiliated corporation whose bid is for a higher amount and the contract is awarded at such higher amount to such other affiliated corporation, then the bid bond, proposal guaranty, or other security otherwise required under this article of each affiliated corporation rescinding or revoking its bid shall be forfeited. (Code 1981, § 36-91-44, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-53, as redesignated by Ga. L. 2001, p. 820, § 12.)

36-91-54. Action on breach of bond.

The obligee in any bid bond required to be given in accordance with this article shall be entitled to maintain an action thereon at any time upon any breach of such bond; provided, however, that no action may be instituted on the bonds or security deposits after one year from the completion of the contract and the acceptance of the public work by the governmental entity. (Code 1981, § 36-91-45, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-54, as redesignated by Ga. L. 2001, p. 820, § 12.)

Part 3

Performance Bonds

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Article 4 (Code Sections 36-91-50 through 36-91-52) as Part 3 of Article 3.

36-91-70. Requirement of performance bonds.

Performance bonds shall be required for all public works construction contracts subject to the requirements of this chapter with an estimated contract amount greater than $100,000.00; provided, however, that a governmental entity may require a performance bond for public works construction contracts that are estimated at $100,000.00 or less. No public works construction contract requiring a performance bond shall be valid for any purpose unless the contractor shall give such performance bond. The performance bond shall be in the amount of at least the total amount payable by the terms of the contract and shall be increased as the contract amount is increased. (Code 1981, § 36-91-50, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-70, as redesignated by Ga. L. 2001, p. 820, § 12.)

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-70 as present Code Section 36-91-90.

36-91-71. Acceptable substitutes for bond.

When the amount of the performance bond required under this article does not exceed $750,000.00, the governmental entity may, in its sole discretion, accept an irrevocable letter of credit by a bank or savings and loan association, as defined in Code Section 7-1-4, in the amount of and in lieu of the bond otherwise required under this article. (Code 1981, § 36-91-51, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-71, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 209, § 2/HB 134.)

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-71 as present Code Section 36-91-91.

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

36-91-72. Action on performance bond.

The obligee in any performance bond required to be given in accordance with this article shall be entitled to maintain an action thereon at any time upon any breach of such bond; provided, however, no action can be instituted on the bonds or security deposits after one year from the completion of the contract and the acceptance of the public work by the governmental entity. (Code 1981, § 36-91-52, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-72, as redesignated by Ga. L. 2001, p. 820, § 12.)

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Section 36-91-72 as present Code Section 36-91-92.

36-91-73 through 36-91-75. Redesignated.

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Code Sections 36-91-73 through 36-91-75 as present Code Sections 36-91-93 through 36-91-95, respectively.

Part 4
Payment Bonds

Editor's notes. — Ga. L. 2001, p. 820, § 12, effective July 1, 2001, redesignated former Article 5 (Code Sections 36-91-70 through 36-91-75) as Part 4 of Article 3.

36-91-90. Requirement for payment bonds.

Payment bonds shall be required for all public works construction contracts subject to the requirements of this chapter with an estimated contract amount greater than $100,000.00; provided, however, that a governmental entity may require a payment bond for public works construction contracts that are estimated at $100,000.00 or less. No public works construction contract requiring a payment bond shall be valid for any purpose, unless the contractor shall give such payment bond; provided, however, that, in lieu of such payment bond, the governmental entity, in its discretion, may accept a cashier's check, certified check, or cash for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of work provided in the contract. The payment bond or other security accepted in lieu of a payment bond shall be in the amount of at least the total amount payable by the terms of the initial contract and shall be increased if requested by the governmental entity

as the contract amount is increased. (Code 1981, § 36-91-70, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, §. 36-91-90, as redesignated by Ga. L. 2001, p. 820, § 12.)

Law reviews. — For survey article on construction law, see 59 Mercer L. Rev. 55 (2007) and 60 Mercer L. Rev. 59 (2008).

JUDICIAL DECISIONS

Bond was adequate remedy at law for subcontractor on school project. — When a subcontractor on a school district's high school project had a remedy against the general contractor on the general contractor's performance bond under O.C.G.A. § 36-91-90, this legal remedy was adequate and precluded the subcontractor from asserting an equitable lien against the school district. McArthur Elec., Inc. v. Cobb County Sch. Dist., 281 Ga. 773, 642 S.E.2d 830 (2007).

Subcontractor, that received a transfer of funds by or on behalf of the debtor as the general contractor, argued its potential claim under O.C.G.A. § 36-91-93 of the Georgia Little Miller Act against the payment bond precluded the bankruptcy trustee from avoiding the transfer as a preference under 11 U.S.C. § 547, as constituting contemporaneous new value. The subcontractor also argued the funds were held in constructive trust, were earmarked, or were paid in the ordinary course of business. Watts v. Pride Util. Constr., Inc. (In re Sudco, Inc.), No. 04-17205-WHD, 2007 Bankr. LEXIS 3730 (Bankr. N.D. Ga. Sept. 27, 2007).

Constructive trust created. — Constructive trust is created in favor of a subcontractor over funds paid by the owner of property to the contractor when the project is a public works project and the subcontractor enjoys no lien rights, but is entitled to file a claim against a payment bond in accordance with the Georgia Little Miller Act, O.C.G.A. § 36-91-90 et seq. Watts v. Pride Util. Constr., Inc. (In re Sudco, Inc.), No. 04-17205-WHD, 2007 Bankr. LEXIS 3730 (Bankr. N.D. Ga. Sept. 27, 2007).

36-91-91. Liability of contracting party to subcontractors for noncompliance.

If a payment bond or security deposit is not taken in the manner and form required in this article, the corporation or body for which work is done under the contract shall be liable to all subcontractors and to all persons furnishing labor, skill, tools, machinery, or materials to the contractor or subcontractor thereunder for any loss resulting to them from such failure. No agreement, modification, or change in the contract, change in the work covered by the contract, or extension of time for the completion of the contract shall release the sureties of such payment bond. (Code 1981, § 36-91-71, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-91, as redesignated by Ga. L. 2001, p. 820, § 12.)

Law reviews. — For survey article on construction law, see 59 Mercer L. Rev. 55 (2007) and 60 Mercer L. Rev. 59 (2008).

JUDICIAL DECISIONS

Notice of subcontractor's claim. — In a claim by a subcontractor against a city under O.C.G.A. § 36-91-91, it was error to find that the subcontractor had not given the required ante litem notice within the time required by O.C.G.A. § 36-33-5; the subcontractor's claim accrued when the city paid the city's contractor, and the subcontractor had given the city notice shortly afterward. Jacks v. City of Atlanta, 284 Ga. App. 200, 644 S.E.2d 150 (2007), cert. denied, 2007 Ga. LEXIS 500 (Ga. 2007).

Cited in McArthur Elec., Inc. v. Cobb County Sch. Dist., 281 Ga. 773, 642 S.E.2d 830 (2007).

36-91-92. Notice of commencement.

(a) The contractor furnishing the payment bond or security deposit shall post on the public works construction site and file with the clerk of the superior court in the county in which the site is located a notice of commencement no later than 15 days after the contractor physically commences work on the project and supply a copy of the notice of commencement to any subcontractor, materialman, or person who makes a written request of the contractor. Failure to supply a copy of the notice of commencement within ten calendar days of receipt of the written request from the subcontractor, materialman, or person shall render the provisions of paragraph (1) of subsection (a) of Code Section 36-91-93 inapplicable to the subcontractor, materialman, or person making the request. The notice of commencement shall include:

(1) The name, address, and telephone number of the contractor;

(2) The name and location of the public work being constructed or a general description of the improvement;

(3) The name and address of the governmental entity that is contracting for the public works construction;

(4) The name and address of the surety for the performance and payment bonds, if any; and

(5) The name and address of the holder of the security deposit provided, if any.

(b) The failure to file a notice of commencement shall render the notice to contractor requirements of paragraph (1) of subsection (a) of Code Section 36-91-93 inapplicable.

(c) The clerk of the superior court shall file the notice of commencement within the records of that office and maintain an index separate from other real estate records or an index with the preliminary notices specified in subsection (a) of Code Section 44-14-361.3. Each such notice of commencement shall be indexed under the name of the governmental entity and the name of the contractor as contained in the notice of commencement. (Code 1981, § 36-91-72, enacted by Ga. L. 2000, p. 498,

§ 1; Code 1981, § 36-91-92, as redesignated by Ga. L. 2001, p. 820, § 12.)

JUDICIAL DECISIONS

Summary judgment improperly granted. — In an action on a public works payment bond under O.C.G.A. §§ 36-91-92 and 36-91-93, a trial court erred in granting summary judgment to a surety because a material issue of fact existed as to whether a general contractor complied with the notice of commencement requirements so as to fall under the provisions of O.C.G.A. § 36-91-93(a)(2), or whether the general contractor received a sub-subcontractor's request but failed to comply and thus fell under the provisions of O.C.G.A. § 36-91-93(a)(1). Southway Crane & Rigging v. Fed. Ins. Co., 294 Ga. App. 504, 669 S.E.2d 482 (2008).

36-91-93. Rights of persons protected by payment bond or security deposit; governmental entity not a party.

(a) Every person entitled to the protection of the payment bond or security deposit required to be given who has not been paid in full for labor or material furnished in the prosecution of the work referred to in such bond or security deposit before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by such person or the material or equipment or machinery was furnished or supplied by such person for which such claim is made, or when he or she has completed his or her subcontract for which claim is made, shall have the right to bring an action on such payment bond or security deposit for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due such person; provided, however, that:

(1) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such payment bond or security deposit on a public works construction project where the contractor has not complied with the notice of commencement requirements shall have the right of action upon the payment bond or security deposit upon giving written notice to the contractor within 90 days from the day on which such person did or performed the last of the labor or furnished the last of the material or machinery or equipment for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was performed or done. The notice to the contractor may be served by registered or certified mail, postage prepaid, or statutory overnight delivery, duly addressed to the contractor, at any place at which the contractor maintains an office or conducts his or her business or at his or her residence, by depositing such notice in any post office or branch post office or any letter box

under the control of the United States Postal Service; alternatively, notice may be served in any manner in which the sheriffs of this state are authorized by law to serve summons or process; and

(2) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such payment bond or security deposit on a public works construction project where the contractor has complied with the notice of commencement requirements in accordance with subsection (a) of Code Section 36-91-92 shall have the right of action on the payment bond or security deposit, provided that such person shall, within 30 days from the filing of the notice of commencement or 30 days following the first delivery of labor, material, machinery, or equipment, whichever is later, give to the contractor a written notice setting forth:

(A) The name, address, and telephone number of the person providing labor, material, machinery, or equipment;

(B) The name and address of each person at whose instance the labor, material, machinery, or equipment is being furnished;

(C) The name and the location of the public works construction site; and

(D) A description of the labor, material, machinery, or equipment being provided and, if known, the contract price or anticipated value of the labor, material, machinery, or equipment to be provided or the amount claimed to be due, if any.

(b) Nothing contained in this Code section shall limit the right of action of a person entitled to the protection of the payment bond or security deposit required to be given pursuant to this article to the 90 day period following the day on which such person did or performed the last of the labor or furnished the last of the material or machinery or equipment for which such claim is made.

(c) Every action instituted under this Code section shall be brought in the name of the claimant without making the governmental entity for which the work was done or was to be done a party to such action. (Code 1981, § 36-91-73, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-93, as redesignated by Ga. L. 2001, p. 820, § 12.)

JUDICIAL DECISIONS

Bond precluded bankruptcy trustee from avoiding transfer. — Subcontractor, that received a transfer of funds by or on behalf of the debtor as the general contractor, argued the subcontractor's potential claim under O.C.G.A. § 36-91-93 of the Georgia Little Miller Act against the payment bond precluded the bankruptcy trustee from avoiding the transfer as a preference under 11 U.S.C. § 547, as constituting contemporaneous new value. The subcontractor also argued

the funds were held in constructive trust, were earmarked, or were paid in the ordinary course of business. Watts v. Pride Util. Constr., Inc. (In re Sudco, Inc.), No. 04-17205-WHD, 2007 Bankr. LEXIS 3730 (Bankr. N.D. Ga. Sept. 27, 2007).

Summary judgment improperly granted. — In an action on a public works payment bond under O.C.G.A. §§ 36-91-92 and 36-91-93, a trial court erred in granting summary judgment to a surety because a material issue of fact existed as to whether a general contractor complied with the notice of commencement requirements so as to fall under the provisions of O.C.G.A. § 36-91-93(a)(2), or whether the general contractor received a sub-subcontractor's request but failed to comply and thus fell under the provisions of O.C.G.A. § 36-91-93(a)(1). Southway Crane & Rigging v. Fed. Ins. Co., 294 Ga. App. 504, 669 S.E.2d 482 (2008).

36-91-94. Providing copy of bond or security deposit agreement.

The official who has the custody of the bond or security deposit required by this article is authorized and directed to furnish to any person making application therefor a copy of the bond or security deposit agreement and the contract for which it was given, certified by the official who has custody of the bond or security deposit. With his or her application, such person shall also submit an affidavit that he or she has supplied labor or materials for such work and that payment therefor has not been made or that he or she is being sued on any such bond or security deposit. Such copy shall be primary evidence of the bond or security deposit and contract and shall be admitted in evidence without further proof. Applicants shall pay for such certified copies and such certified statements such fees as the official fixes to cover the cost of preparation thereof, provided that in no case shall the fee fixed exceed the fees which the clerks of the superior courts are permitted to charge for similar copies. (Code 1981, § 36-91-74, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-94, as redesignated by Ga. L. 2001, p. 820, § 12.)

36-91-95. Time limitation.

No action can be instituted on the payment bonds or security deposits after one year from the completion of the contract and the acceptance of the public works construction by the proper public authorities. Every action instituted under this article shall be brought in the name of the claimant, without the governmental entity for which the work was done or was to be done being made a party thereto. (Code 1981, § 36-91-75, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-95, as redesignated by Ga. L. 2001, p. 820, § 12.)

JUDICIAL DECISIONS

Claims arising under payment bond were time-barred. — Summary judgment was properly entered for a surety on a subcontractor's breach of an implied contract, bad faith breach of contract, promissory estoppel, and unjust enrichment claims as all of the claims arose from work performed while the surety was

acting as surety on the payment bond and from the surety's refusal to pay the subcontractor under the payment bond; thus, O.C.G.A. § 36-91-95 applied and the claims were time barred. Masonry Specialists of Ga., Inc. v. United States Fid. & Guar. Co., 273 Ga. App. 774, 616 S.E.2d 103 (2005).

Suit on payment bond was time-barred. — Summary judgment was properly entered for a surety on a subcontractor's suit on a payment bond as the surety produced an affidavit stating that the project was completed and dedicated more than one year before the suit was filed; and the subcontractor failed to show that the affiant was not authorized to accept the completed project. Masonry Specialists of Ga., Inc. v. United States Fid. & Guar. Co., 273 Ga. App. 774, 616 S.E.2d 103 (2005).

ARTICLE 4

BIDDING FOR GOVERNMENT WORKS PROJECTS

Effective date. — This article became effective May 2, 2011.

Cross references. — State and private participation in water projects, § 50-23-28.2.

36-91-100. Definitions.

As used in this article, the term:

(1) "Affected local government" means any county, municipality, or consolidated government in which water storage facilities of a project are located or proposed to be located, which will receive for local use water or services from such project, or which, under a service delivery agreement entered into pursuant to Article 2 of Chapter 70 of this title, provides or is authorized to provide within an area water facilities or services similar to water facilities and services proposed to be provided by a project in such area.

(2) "Lead local authority" means the sole local governing authority or local authority participating in a project or the local governing authority or local authority designated pursuant to subsection (b) of Code Section 36-91-102.

(3) "Local authority" means any local water authority created by Act of the General Assembly, any authority created pursuant to the provisions of Chapter 62 of this title, and any authority created by a county, municipality, or consolidated government which provides water, sewer, or waste-water treatment services.

(4) "Local governing authority" means any county, municipality, or consolidated government.

(5) "Project" has the meaning provided by paragraph (10) of Code Section 12-5-471 and includes environmental facilities as defined in subparagraph (B) of paragraph (5) of Code Section 50-23-4. (Code 1981, § 36-91-100, enacted by Ga. L. 2011, p. 52, § 1/SB 122; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "Chapter 70 of this title" for "Chapter 70 of Title 36" in paragraph (1), and substituted "Chapter 62 of this title" for "Chapter 62 of Title 36" in paragraph (3).

36-91-101. Authority to enter into contracts; costs; grants or loans; eminent domain.

(a) Local governing authorities and local authorities shall be authorized to enter into contracts provided for by this article with private persons, firms, associations, or corporations providing for or delegating the responsibility for procuring all permits, licenses, and permissions from the United States of America or any agency or instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or any county or municipality of this state as necessary or required for the purpose of constructing projects within this state, and to plan, finance, construct, acquire, lease, operate, or maintain such projects or cause such projects to be planned, financed, constructed, acquired, leased, operated, or maintained. Such contracts may provide for the reimbursement to the private person, firm, association, or corporation of costs and expenses associated with the execution thereof through service payments, user fees, purchase payments, and such other consideration as the local governing authority or local authority may deem appropriate. Such contracts may provide for the assumption by such local governing authority or local authority of such projects, permits, licenses, and permissions at such times as appropriate for the construction of the project or as otherwise agreed upon.

(b) A local governing authority or local authority may take any action to obtain federal, state, or local assistance for a project that serves the public purpose of this article and may enter into any contracts required to receive such assistance. A local governing authority or local authority may determine that it serves the public purpose of this article for all or any portion of the costs of a project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state, or local government or any instrumentality thereof. A local governing authority or local authority may agree to make grants or loans to the operator of a project from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

(c) Nothing in this article shall be construed to delegate the power of eminent domain to any private entity with respect to any project commenced or proposed pursuant to this article. Any local governing authority may exercise the power of eminent domain in the manner provided by law for the purpose of acquiring any property or interests therein to the extent that such action serves the public purpose of this article. (Code 1981, § 36-91-101, enacted by Ga. L. 2011, p. 52, § 1/SB 122.)

36-91-102. Planning, finance, construction, acquisition, leasing, operation, and maintenance of projects; implementation; lobbying restrictions.

(a) In addition to other methods of procurement authorized by law, local governing authorities and local authorities shall be authorized to utilize the procedures of this article to provide for the planning, finance, construction, acquisition, leasing, operation, and maintenance of projects. The provisions of this article shall be an alternative to such other methods to be exercised at the option of each local governing authority or local authority.

(b) After identifying or being informed of any project that may be suitable for utilization of the procedures of this article, one or more local governing authorities and local authorities may participate in consideration and implementation of a project. Where more than one local governing authority or local authority agrees to participate in consideration or implementation of a project, the participants shall designate one of their number to be the lead local authority for purposes of implementing the procedures of this article; provided, however, that not less than one representative of each such participating local governing authority or local authority, as agreed to by such local governing authorities or local authorities, shall have the right to participate in all aspects of such implementation.

(c)(1) The lead local authority shall evaluate a project to determine, in the judgment of the lead local authority, appropriate or desirable levels of state, local, and private participation in financing, constructing, and operating such project. In making such determinations, the lead local authority shall seek the advice and input of affected local governments and is encouraged to seek the advice and input of the Water Supply Division of the Georgia Environmental Finance Authority, affected local governing authorities, applicable planning organizations, and the private financial and construction sectors.

(2) The lead local authority shall be authorized to issue a written request for proposals indicating the scope of the project, the proposed financial participations in the project, and the factors that will be used in evaluating the proposals as well as the relative importance of the evaluation factors, and containing or incorporating by reference other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor. Public notice of such request for proposal shall be made at least 90 days prior to the date set for receipt of proposals by posting the legal notice on the websites of each participating local governing authority and local authority in substantially the same manner utilized by such authority to solicit requests for proposals, with a copy

of such notice provided simultaneously to each affected local government.

(3) Upon receipt of a proposal or proposals responsive to the request for proposals, the lead local authority shall accept written public comment, solicited in the same manner as provided for notice of proposals, for a period of 30 days beginning at least ten days after the date set for receipt of proposals. In addition, the lead local authority shall hold at least one public hearing on such proposals within the jurisdiction of each participating local governing authority, participating local authority, or affected local government not later than the conclusion of the period for public comment.

(4)(A) The lead local authority, acting by and through a designated representative appointed for such purposes, and with the participation of any designated representatives of other participating local governing authorities or local authorities, shall engage in individual discussions with each respondent deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation called for by the local governing authority. Repetitive informal interviews shall be permissible. Any affected local governments shall receive ten days' notice of any such individual discussions and interviews and may participate through an appointed representative. In the event that the Georgia Environmental Finance Authority or any other state authority or agency agrees to consider or participate in the project, a representative of such authority or agency appointed by such authority or agency may participate in such discussions and interviews.

(B) At the discussion stage, the representatives may discuss estimates of total project costs, including, but not limited to, life cycle costing and nonbinding estimates of price for services. Discussions conducted with respondents pursuant to this subparagraph shall not be public meetings subject to the provisions of Chapter 14 of Title 50. Proprietary information or trade secrets may be designated by a respondent as subject to one or more exemptions from public disclosure pursuant to the provisions of Code Section 50-18-72, but such designation shall not be binding on the participating local governing authorities, local authorities, and affected local governments unless consistent with applicable law.

(C)(i) At the conclusion of the discussion stage, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process, the designated representative, with the input of the representatives of any other participating entity and in an open and public meeting subject to

the provisions of Chapter 14 of Title 50, shall select in the order of preference one or more respondents whose qualifications and proposed services are deemed most meritorious.

(ii) Negotiations shall then be conducted by the designated representative with the selected respondents. A representative of any participating local governing authority, participating local authority, and participating state agency or authority shall have the right to notice of and participation in such negotiations. Negotiations conducted with selected respondents pursuant to this division shall not be public meetings subject to the provisions of Chapter 14 of Title 50.

(D) The designated representative shall select for approval by the lead local authority the respondent for project implementation based upon contract terms that are the most satisfactory and advantageous to the participating local governing authorities and local authorities based upon a thorough assessment of value and the ability of the final project's characteristics to meet the goals of the participating local governing authorities and local authorities, consistent with applicable state-wide and regional water plans and local comprehensive plans. Before making such selection, the designated representative shall consult in an open and public meeting subject to the provisions of Chapter 14 of Title 50 with the representatives of any participating local governing authority, participating local authority, participating state agency or authority, and affected local government. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, the lead local authority may award contracts to more than one respondent. Should the lead local authority determine in writing that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that respondent.

(E) Upon approval of the selection by the lead local authority, a contract or contracts not exceeding 50 years in duration may be entered into with the selected respondents on behalf of all participating entities, subject to approval by each such participating entity and by each affected local government.

(5) A dispute over the award of a contract under this article shall be resolved by the filing of a petition in the superior court of the county in which the lead local authority is located within 30 days of the awarding of such contract and shall be determined through the use of a special master appointed by the judge of the superior court of the county in which the lead local authority is located. The decision of the special master with regard to such dispute shall be appealable for

a de novo review to the superior court of the county in which the lead local authority is located within 30 days following the decision of the special master. Neither the special master nor the superior court shall be authorized to enjoin or otherwise delay or suspend the execution of the contract and any work to be performed under such contract.

(6) Nothing in this Code section shall require the designated representatives, the lead local authority, or any local governing authority, local authority, or state agency or authority to continue negotiations or discussions arising out of any request for proposal.

(7) Every local governing authority and local authority shall be authorized to promulgate reasonable rules or regulations to assist in its evaluation of proposals and to implement the purposes of this article.

(d) No public officer, employee, or member of a local governing authority or local authority, with respect to contracts of such local governing authority or local authority, or the General Assembly shall serve as an agent, lobbyist, or board member for any private entity directly or indirectly under a contract or negotiating a contract provided for by this article for three years after leaving his or her position as a public officer, employee, or member of the local governing authority, local authority, or the General Assembly. (Code 1981, § 36-91-102, enacted by Ga. L. 2011, p. 52, § 1/SB 122; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (c)(4)(A).

CHAPTER 92

WAIVER OF IMMUNITY FOR MOTOR VEHICLE CLAIMS

Sec.
36-92-1. Definitions.
36-92-2. Maximum waiver amount; exceptions; liability; recovery of interest.
36-92-3. No employee liability; parties to litigation; evidence; bar to further recovery.
36-92-4. Regulation of settlement of actions against local government entities; exclusion of punitive and exemplary damages; rules of disclosure of documents; recovery against local governments; jurisdiction.
36-92-5. Applicability.

Law reviews. — For note on the 2002 enactment of this chapter, see 19 Ga. St. U. L. Rev. 243 (2002).

36-92-1. Definitions.

As used in this chapter, the term:

(1) "Claim" means any demand against a local government entity for money for a loss caused by negligence of a local government entity officer or employee using a covered motor vehicle while carrying out his or her official duties or employment.

(2) "Covered" motor vehicle means:

(A) Any motor vehicle owned by the local government entity; and

(B) Any motor vehicle leased or rented by the local government entity.

(3) "Local government entity" means any county, municipal corporation, or consolidated city-county government of this state. Such term shall not include a local school system.

(4) "Local government officer or employee" means an officer, agent, servant, attorney, or employee of a local government entity.

(5) "Loss" means personal injury, disease, death, damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death; pain and suffering; mental anguish; loss of consortium; and any other element of actual damages recoverable in actions for negligence.

(6) "Motor vehicle" means any automobile, bus, motorcycle, truck, trailer, or semitrailer, including its equipment, and any other equipment permanently attached thereto, designed or licensed for use on the public streets, roads, and highways of the state.

(7) "Occurrence" means an accident involving a covered motor vehicle. (Code 1981, § 36-92-1, enacted by Ga. L. 2002, p. 579, § 3.)

JUDICIAL DECISIONS

Definition of "motor vehicle" does not apply to § 33-24-51(b). — In determining if a county waived the county's sovereign immunity through the voluntary purchase of liability insurance under the second sentence of O.C.G.A. § 33-24-51(b), a trial court erred in considering the definition of "motor vehicle" provided in O.C.G.A. § 36-92-1; rather, "any motor vehicle" was defined as a vehicle that was capable of being driven on the public roads that was covered by a liability insurance policy purchased by the county. Glass v. Gates, 311 Ga. App. 563, 716 S.E.2d 611 (2011).

Cited in Hewell v. Walton County, 292 Ga. App. 510, 664 S.E.2d 875 (2008); Strength v. Lovett, 311 Ga. App. 35, 714 S.E.2d 723 (2011); Bd. of Comm'rs v. Johnson, 311 Ga. App. 867, 717 S.E.2d 272 (2011).

36-92-2. Maximum waiver amount; exceptions; liability; recovery of interest.

(a) The sovereign immunity of local government entities for a loss arising out of claims for the negligent use of a covered motor vehicle is waived up to the following limits:

(1) $100,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of $300,000.00 because of bodily injury or death of two or more persons in any one occurrence, and $50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2005, and until December 31, 2006;

(2) $250,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of $450,000.00 because of bodily injury or death of two or more persons in any one occurrence, and $50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2007, and until December 31, 2007; and

(3) $500,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of $700,000.00 because of bodily injury or death of two or more persons in any one occurrence, and $50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2008.

(b) The sovereign immunity of local government entities for a loss arising out of claims for the negligent use of a covered motor vehicle is waived only to the extent and in the manner provided in this chapter and only with respect to actions brought in the courts of this state. This chapter shall not be construed to affect any claim or cause of action otherwise permitted by law and for which the defense of sovereign immunity is not available.

(c) Local government entities shall have no liability for losses resulting from conduct on any part of local government officers or employees which was not within the scope of their official duties or employment.

(d) The waiver provided by this chapter shall be increased to the extent that:

(1) The governing body of the local governmental entity by resolution or ordinance voluntarily adopts a higher waiver;

(2) The local government entity becomes a member of an interlocal risk management agency created pursuant to Chapter 85 of this title to the extent that coverage obtained exceeds the amount of the waiver set forth in this Code section; or

(3) The local government entity purchases commercial liability insurance in an amount in excess of the waiver set forth in this Code section.

(e) Interest prior to judgment may be recovered pursuant to the "Unliquidated Damages Interest Act" as provided for in Code Section 51-12-14; however, any recovery of interest prior to judgment shall be included within the applicable aggregate amount per occurrence as set forth in this Code section. (Code 1981, § 36-92-2, enacted by Ga. L. 2002, p. 579, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, a comma was added following "January 1, 2005" in paragraph (a)(1) and following "January 1, 2007" in paragraph (a)(2).

Law reviews. — For survey article on insurance law, see 60 Mercer L. Rev. 191 (2008).

JUDICIAL DECISIONS

Sovereign immunity not waived. — In an action arising out of an arrest, despite the way the arrestee was treated, the trial court properly dismissed a complaint against a county, and granted summary judgment on the same complaint against a city, on sovereign immunity grounds since the arrestee failed to show that the immunity had been waived. Scott v. City of Valdosta, 280 Ga. App. 481, 634 S.E.2d 472 (2006).

Trial court erred in denying a county's motion for summary judgment in a driver's action alleging that the county was negligent for failing to maintain and repair a roadway or failing to warn of a known hazard because there was no evidence that the county waived the county's sovereign immunity under O.C.G.A. § 36-92-2, and there was no evidence that a county vehicle caused the hole in the roadway; the plaintiff, not the defendants, has the burden of establishing that a county has waived sovereign immunity by purchasing liability insurance protection covering the plaintiff's claim. Effingham County v. Rhodes, 307 Ga. App. 504, 705 S.E.2d 856 (2010).

Trial court erred in denying a county and a county commissioner summary judgment in a driver's action alleging that the county and the commissioner were negligent for failing to maintain and repair a roadway or failing to warn of a known hazard because a suit against the commissioner in the commissioner's official capacity was a claim against the county, and the commissioner could raise

any defense available to the county, including sovereign immunity; the driver advanced no argument that an act of the General Assembly specifically waived the sovereign immunity protecting the commissioner. Effingham County v. Rhodes, 307 Ga. App. 504, 705 S.E.2d 856 (2010).

Negligent use of a city or county owned motor vehicle. — In a wrongful death action by a decedent's estate and her children against the county sheriff, the sheriff's sovereign immunity was waived pursuant to O.C.G.A. § 36-92-2(a) because the claim of reckless disregard for proper law enforcement procedures in pursuing a fleeing suspect came within the ambit of a claim for negligent use of a city-or county-owned motor vehicle. Strength v. Lovett, 311 Ga. App. 35, 714 S.E.2d 723 (2011), cert. denied, No. S11C1794, 2011 Ga. LEXIS 979 (Ga. 2011).

Purchase of general liability insurance policy waived immunity for injuries from tar machine. — In a worker's suit alleging negligence on the part of a county with regard to the county allegedly failing to properly instruct and supervise the worker in the use of a portable tar kettle machine, the trial court erred by granting the county's motion for a judgment on the pleadings based on sovereign immunity as the worker sufficiently alleged that the machine was a vehicle as contemplated by O.C.G.A. § 33-24-51, which established a waiver of sovereign immunity if the county purchased liability insurance to cover damages and injuries arising from the use of motor vehicles under the county's management. Hewell v. Walton County, 292 Ga. App. 510, 664 S.E.2d 875 (2008).

Cited in Weaver v. City of Statesboro, 288 Ga. App. 32, 653 S.E.2d 765 (2007); Bd. of Comm'rs v. Johnson, 311 Ga. App. 867, 717 S.E.2d 272 (2011).

36-92-3. No employee liability; parties to litigation; evidence; bar to further recovery.

(a) Any local government officer or employee who commits a tort involving the use of a covered motor vehicle while in the performance of his or her official duties is not subject to lawsuit or liability therefor. Nothing in this chapter, however, shall be construed to give the local government officer or employee immunity from suit and liability if it is proved that the local government officer's or employee's conduct was not within the performance of his or her official duties.

(b) A person bringing an action against a local government entity under the provisions of this chapter shall name as a party defendant the local government entity for which the officer or employee was acting and shall not name the local government officer or employee individually. In the event that the local government officer or employee is individually named for an act for which the local government entity is liable under this chapter, the local government entity for which the local government officer or employee was acting shall be substituted as the party defendant.

(c) For the purpose of presenting evidence at the trial of a case brought under the waiver provisions of this chapter, a plaintiff calling as a witness the present or former local government officer or employee whose alleged tort forms the basis of the claim against the local government entity defendant shall be allowed to subject such witness to cross-examination.

(d) Subject to the provisions contained in Code Sections 51-1-32 through 51-1-34, a settlement or judgment in an action or settlement on a claim brought pursuant to this chapter constitutes a complete bar to any further action by the claimant against a local government officer or employee or the local government entity by reason of the same occurrence.

(e) This chapter shall not waive the workers' compensation exclusive remedy when local government officers or employees are injured on the job. (Code 1981, § 36-92-3, enacted by Ga. L. 2002, p. 579, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, in subsection (d), a comma was added following "51-1-34" and a comma was deleted following "or employee".

JUDICIAL DECISIONS

Construction. — General Assembly in O.C.G.A. § 36-92-3 does not eliminate the ability of a plaintiff to recover for his or her injuries but simply shifts the responsibility to pay damages in certain situations from the individual employee to the local government entity, which comports with the General Assembly's general authority to modify common law rights of action. DeLoach v. Elliott, 289 Ga. 319, 710 S.E.2d 763 (2011).

Claim against police officer barred. — Trial court did not err in granting a police officer summary judgment in the officer's individual capacity on the ground that the officer was protected from suit under O.C.G.A. § 36-92-3(a) because a driver brought a claim against the officer and a city pursuant to § 36-92-3, and the trial court granted summary judgment to the city; because the driver did not enumerate that decision, it was final and, pursuant to § 36-92-3(d), provided a "complete bar" to any future suit brought by the driver against the city or the employee and involving the tortious act at issue in the case. DeLoach v. Elliott, 289 Ga. 319, 710 S.E.2d 763 (2011).

Construction with O.C.G.A. § 50-21-25. — Due to the nearly identical language between O.C.G.A. §§ 36-92-3 and 50-21-25, the General Assembly intended to provide immunity for municipal employees in the context of torts involving a covered motor vehicle, which is comparable to the immunity granted to state employees in the context of all torts, as long as the pertinent conditions have been satisfied; thus, by the passage of O.C.G.A. § 36-92-3, the legislature intended to foreclose all recovery against municipal employees for torts committed within the scope of employment and involving the use of a covered motor vehicle. DeLoach v. Elliott, 289 Ga. 319, 710 S.E.2d 763 (2011).

Government entity substituted as party. — Intent of O.C.G.A. § 36-92-3(b) is that the government entity should be substituted as a party to a suit whenever one of the entity's employees has committed "an act for which the local government entity is liable under this chapter;" the selected phrase is merely a description of when the government entity should replace the employee because if the government entity would not be liable under O.C.G.A. § 36-92-1 et seq., as when the employee committed the tort using an uncovered motor vehicle, then the government entity is not "liable under this chapter" and need not be substituted. DeLoach v. Elliott, 289 Ga. 319, 710 S.E.2d 763 (2011).

36-92-4. Regulation of settlement of actions against local government entities; exclusion of punitive and exemplary damages; rules of disclosure of documents; recovery against local governments; jurisdiction.

(a) Local government entities may provide for the payment of claims, settlements and judgments, and their associated costs through any method including, but not limited to, self-insurance, use of a fund within the local government's budget for the payment of claims, the purchase of liability insurance, participation in an interlocal risk management agency organized pursuant to Chapter 85 of Title 36, or a combination thereof.

(b) No award for damages under this chapter shall include punitive or exemplary damages.

(c) Notwithstanding any law to the contrary, any document or information which pertains to the requesting or giving of legal advice or the disclosure of reports or evaluations of persons, including adjusters, assigned to evaluate and adjust claims concerning or pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against a local government entity under this chapter shall be considered privileged and confidential and shall not be subject to disclosure until final disposition of a claim. Notwithstanding the provisions of this subsection, upon filing a lawsuit pursuant to this chapter, Chapter 11 of Title 9 and any other law applicable to cases in litigation shall apply.

(d) Nothing in this chapter shall be construed to authorize an execution or levy against any local government entity's property or funds. Execution or levy against a local government entity's property or funds is expressly prohibited. However, nothing in this Code section shall bar the pursuit of any other remedies that exist to enforce a judgment under state law.

(e) Where policies of insurance or contracts of indemnity have not been purchased or entered into by a local government entity for the purposes of paying claims and judgments under this chapter, the fiscal year aggregate liability of any local government entity under this chapter shall not exceed any self-insurance or other reserve or fund established to pay claims arising out of this chapter. Where policies of insurance or contracts of indemnity have been purchased or entered into and the local government entity also self-insures or establishes another reserve or fund to pay claims arising out of this chapter, the fiscal year aggregate liability of any local government entity under this chapter shall not exceed such entity's policies of insurance or contracts of indemnity and the amount of any self-insurance or other reserve or fund established to pay claims arising out of this chapter. Any judgment

obtained in excess of this limitation on annual aggregate liability shall not be void. Such excess judgments shall be paid by the local government entity no later than six months from the end of the local government entity's fiscal year in which the final judgment was entered. If there are multiple judgments, the judgments shall be paid in the order in which each final judgment was entered by the court following any appeals.

(f) The existence or amount of the waiver of immunity specified in Code Section 36-92-2 shall not be disclosed or suggested to the jury.

(g) As a condition of the waiver of sovereign immunity authorized by this chapter, all tort actions filed against a local government entity under this chapter, including any action filed against a local government entity as a joint tort-feasor, shall be brought in the state or superior court of the county wherein the local government entity resides. (Code 1981, § 36-92-4, enacted by Ga. L. 2002, p. 579, § 3; Ga. L. 2012, p. 775, § 36/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (g).

36-92-5. Applicability.

This chapter shall apply to all claims and causes of actions arising out of events occurring on or after January 1, 2005. (Code 1981, § 36-92-5, enacted by Ga. L. 2002, p. 579, § 3.)

CHAPTER 93

INFRASTRUCTURE DEVELOPMENT DISTRICTS

Sec.
36-93-1 through 36-93-26 [Repealed].

36-93-1 through 36-93-26.

Editor's notes. — Ga. L. 2007, p. 739, § 5/SB 200, not codified by the General Assembly, provides: "This Act shall only become effective on January 1, 2009, upon the ratification of a resolution at the November, 2008, state-wide general election that amends the Constitution so as to authorize the General Assembly to provide by general law for the creation and comprehensive regulation of infrastructure development districts. If such resolution is not so ratified, this Act shall not become effective and shall stand repealed in its entirety on January 1, 2009." The constitutional amendment proposed in Ga. L. 2007, p. 775/SR 309, was defeated in the general election on November 4, 2008.

Index

A

ABANDONMENT.
Cemeteries and burial grounds.
General provisions, §§36-72-1 to 36-72-16.

ACADEMIES.
Georgia county leadership academy, §§36-20-5, 36-20-6, 36-20-9.
Georgia police academy, §§35-4-1 to 35-4-9.

ACCG GROUP HEALTH BENEFITS PROGRAM, INC.
Group health benefits program for local government employees, §§36-21-1 to 36-21-10.
Administrative expenses, §§36-21-3, 36-21-5.
Audits, §36-21-4.
Board of directors, §36-21-3.
Definitions, §36-21-2.
Establishment of benefit plans, §36-21-5.
Funds.
Contributions by county or employee, §36-21-5.
Insurance statutes of Title 33 inapplicable, §36-21-8.
Investment of funds, §36-21-6.
Protection from process, levy, attachment or assignment, §36-21-7.
Purpose, §36-21-1.
State debt not to be created, §36-21-10.
Tax exempt status of program, §36-21-9.

ACCIDENT AND SICKNESS INSURANCE.
Local government employees.
Group health benefits program.
ACCG Group Health Benefits Program, Inc, §§36-21-1 to 36-21-10.

ACCOUNTANTS.
Counties.
Examination of books.
Employment of accountant for, §36-1-10.

ACCOUNTS AND ACCOUNTING.
Cable television fair competition.
Accounting methods for financial reports, §36-90-4.
Records of actual costs and revenues, §36-90-4.
County treasurers.
Final settlement of accounts, §36-6-21.
Requirement by county authorities of accounting by treasurer, §36-6-22.
Proceedings upon failure to render accounting, §36-6-23.
Local government.
Uniform chart of accounts, §36-81-3.

ACTIONS.
Bond issues.
Local governments and political subdivisions.
Enforcement of collection by bondholders, §36-82-4.
Counties.
Body to sue and be sued, §36-1-3.
Liability to be sued, §36-1-4.
Crime information center.
Restricted access to records, action against entity declining to restrict, §35-3-37.
Law enforcement officers.
Peace officers standards and training council.
Civil actions against noncomplying peace officers and law enforcement units, §35-8-17.
Municipal corporations.
Injury to person or property.
Written demand as prerequisite to action against municipality, §36-33-5.
Nomenclature of municipal and county police departments, §35-10-9.
Civil penalties, §35-10-8.
Public works.
Local government bidding and contracting.
Bid bonds.
Action on breach, §36-91-54.
Payment bonds, §§36-91-93, 36-91-95.
Performance bonds.
Action on breach, §36-91-72.

ADMINISTRATIVE PROCEDURE.
Interlocal risk management agencies.
Hearings before commissioner of insurance.
Applicability of act, §36-85-17.
Law enforcement officers.
Peace officers standards and training council.
Disciplinary action.
Applicability of act, §35-8-7.2.

ADULT BOOKSTORES AND MOVIE HOUSES, §36-60-3.

AD VALOREM TAXATION OF PROPERTY.
Annexation.
Effective date of annexation, §36-36-2.
Municipal ad valorem taxes.
Applicability to annexed territory, §36-36-38.

ADVANCED BROADBAND COLLOCATION, §§36-66B-1 to 36-66B-4.
Applications.
Streamlined processing, §36-66B-4.
Citation of act, §36-66B-1.
Definitions, §36-66B-3.
Findings of legislature, §36-66B-2.
Intent of legislature, §36-66B-2.
Streamlined processing of applications, §36-66B-4.
Title of act, §36-66B-1.

ADVANCED BROADBAND COLLOCATION ACT.
General provisions, §§36-66B-1 to 36-66B-4.
Short title, §36-66B-1.

ADVERTISING.
Department of public safety.
Nomenclature act of 1995, §§35-2-80 to 35-2-88.

AFFIDAVITS.
Federal work authorization program.
Private employers.
Registration and participation, requirement, §36-60-6.

AGED PERSONS.
Criminal offenses and penalties.
Disabled adults and elder persons protection act.
Bureau of investigation, investigation of offenses, §35-3-4.

AGED PERSONS —Cont'd
Cruelty to person 65 years or older.
Bureau of investigation, investigation of offenses, §35-3-4.
Protection of older persons act of 2000.
Bureau of investigation, investigation of offenses, §35-3-4.

AGRIBUSINESS.
Local governments.
Contracts.
Purposes for which authorized, §36-60-14.

AGRICULTURAL PRODUCTS DEALERS.
Agricultural products produced in Georgia.
Local government purchasing.
Preference given to, §36-84-1.
Purchasing.
Preference given to agricultural products produced in Georgia.
Local government purchasing, §36-84-1.

AGRICULTURE.
Purchasing.
Preference given to agricultural products produced in Georgia.
Local government purchasing, §36-84-1.

AIRCRAFT.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Department of public safety.
Authority to acquire, operate, house and dispose of state aviation assets, §35-2-140.
State aviation assets.
Authority of department of public safety, §35-2-140.
Trespass.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.

AIRPORTS.
Department of public safety.
State aviation assets, powers, §35-2-140.
Municipal corporations.
Powers as to certain buildings and facilities, §36-34-3.

ALABAMA.
Fresh pursuit by law enforcement officers.
Authority of officers in fresh pursuit in state, §35-1-15.

ALARMS.
Local governments.
Installation, service, sale, etc., by locality, §36-60-12.

ALCOHOLIC BEVERAGES.
Jurisdiction.
Minors.
Furnishing to or purchase and possession by persons under 21 years of age.
Municipal courts, §36-32-10.
Minors.
Furnishing to.
Municipal court jurisdiction, §36-32-10.
Municipal courts.
Furnishing to or purchase and possession by persons under 21 years of age, §36-32-10.
Transfer of cases, §36-32-10.
Purchase or possession by persons under 21.
Municipal court jurisdiction, §36-32-10.
Municipal corporations.
New municipal corporation created by local act.
Local power to license and regulate alcoholic beverages, §36-31-7.

ALERT SYSTEMS FOR EMERGENCY NOTIFICATIONS.
Amber alert.
Missing children information center, §§35-3-80 to 35-3-85.
Missing disabled adults, §§35-3-170 to 35-3-180.
Unapprehended murder or rape suspects.
Kimberly's call, §35-3-190.

ALIENS.
Counties.
Immigration sanctuary policies prohibited, §36-80-23.
Enforcement of immigration laws in state.
Arrest of illegal aliens, §35-1-17.
Cooperation with federal authorities.
State and local government employees, §35-1-17.

ALIENS —Cont'd
Enforcement of immigration laws in state —Cont'd
Criminal justice coordinating council.
Grants and incentive programs, duty, §35-6A-10.
Federal work authorization program to verify information of all new employees.
Business license, other documents to operate business.
Evidence of authorization to use required, §36-60-6.
Private employers.
Registration with, utilization, requirement, §36-60-6.
Immunity.
Law enforcement officers or government officials, §35-1-17.
Memorandum of understanding with federal agencies, §35-1-17.
Training peace officers to enforce, §35-2-14.
Transporting illegal aliens to federal facilities.
State and local law enforcement officers, authority, §35-1-17.
Federal work authorization program to verify information of all new employees.
Business license, other documents to operate business.
Evidence of authorization to use required, §36-60-6.
Private employers.
Registration with, utilization, requirement, §36-60-6.
Illegal aliens.
Arrest, §35-1-17.
Transporting to federal facility.
State and local law enforcement officers, authority, §35-1-17.
Local government entities.
Immigration sanctuary policies prohibited, §36-80-23.
Municipal corporations.
Immigration sanctuary policies prohibited, §36-80-23.
Peace officers.
Enforcement of immigration laws.
Agreements with federal authorities, §35-1-17.
Arrest of illegal aliens, §35-1-17.
Cooperation with federal authorities, §35-1-17.

ALIENS —Cont'd
Peace officers —Cont'd
Enforcement of immigration laws —Cont'd
Immunity, §35-1-17.
Training designated officers, authority of trained officers, §35-2-14.
Transporting illegal aliens to federal facilities, §35-1-17.

ALLEYS.
Municipal corporations.
Enclosure of lanes or alleys, §36-30-11.
Powers, §§36-30-11, 36-34-3.

ALLOCATION SYSTEM.
Georgia allocation system.
Private activity bonds, §§36-82-180 to 36-82-202.
Short title, §36-82-180.

ALTERNATIVE DISPUTE RESOLUTION.
Annexation disputes.
Arbitration, §§36-36-110 to 36-36-119.
Local government service delivery, §36-70-25.

ALZHEIMER'S DISEASE.
Missing persons, §35-1-8.

AMBER ALERT.
Missing children information center, §§35-3-80 to 35-3-85.
Definitions, §35-3-80.
Duties, §35-3-82.
Established, §35-3-81.
Law enforcement agencies.
Duties, §§35-3-83, 35-3-84.
Missing child report, §35-3-83.
Defined, §35-3-80.
Powers, §35-3-85.
Registration of related organizations, §35-3-85.
Responsibilities, §35-3-82.
Sending information to center.
Bureau of investigation, §35-3-84.
Staff, §35-3-81.
Supervisor, §35-3-81.

ANIMAL HANDLERS.
Law enforcement officers.
Animals trained to detect explosives, §35-8-25.

ANIMALS.
Law enforcement officers.
Handlers of animals trained to detect explosives, §35-8-25.

ANNEXATION, §§36-36-1 to 36-36-92.
Adjoining county.
Annexation by municipal corporation into, §36-36-23.
Ad valorem tax purposes.
Effective date, §36-36-2.
Appeals.
Application by owners of 60 percent of land and 60 percent of electors.
Declaratory judgment to determine validity of annexation.
Judicial review, §36-36-39.
Applicability of article, §36-36-1.
Application by 100 percent of landowners, §§36-36-20 to 36-36-23.
Adjoining county.
Annexation by municipal corporation into, §36-36-23.
Authority to annex, §36-36-21.
Deannexation, §36-36-22.
Definitions.
Contiguous area, §36-36-20.
Effect of annexation, §36-36-21.
Identification of annexed property.
Filing requirements, §36-36-21.
Application by owners of 60 percent of land and 60 percent of electors, §§36-36-30 to 36-36-40.
Aggregate external boundary.
Determination of, §36-36-31.
Appeals.
Declaratory judgment to determine validity of annexation.
Judicial review, §36-36-39.
Authority to annex, §36-36-32.
Boundaries.
Aggregate external boundary.
Determination, §36-36-31.
Annexation across county boundary lines, §36-36-33.
Compliance of application with provisions.
Determination, §36-36-34.
Definitions.
Contiguous area, §36-36-31.
Municipal corporation, §36-36-30.
Determination of aggregate external boundary, §36-36-31.
Effect of annexation, §36-36-38.
Generally, §36-36-32.
Hearing on application, §36-36-36.
Noncompliance applications.
Notification of deficiencies, §36-36-34.

ANNEXATION —Cont'd
Application by owners of 60 percent of land and 60 percent of electors —Cont'd
Ordinances.
Adoption of ordinances, §36-36-37.
Copy of ordinance.
Filing, §36-36-38.
Public utilities.
Requiring use of municipal owned utilities by residents of annexed territory, §36-36-40.
Restrictions.
No annexation across county boundary lines, §36-36-33.
Signature requirements, §36-36-32.
Taxation.
Municipal ad valorem taxes.
Applicability to annexed territory, §36-36-38.
Withdrawal of consent by property owners, §36-36-36.
Arbitration of annexation disputes, §§36-36-110 to 36-36-119.
Abandonment of proposed annexation, §36-36-118.
Annexation after conclusion of process, §36-36-117.
Applicability of provisions, §36-36-110.
Arbitration panel, §§36-36-114 to 36-36-116.
Alternative dispute resolution training, §36-36-114.
Appeal, grounds for, §36-36-116.
Compensation, §36-36-115.
Composition and membership, §36-36-114.
Duties, §36-36-115.
Findings and recommendation, §36-36-115.
Meeting, §36-36-115.
Oath of office, §36-36-114.
Selection of members, §36-36-114.
Unappealed order, binding effect on parties, §36-36-116.
Zoning and land use training, §36-36-114.
Binding effect on parties.
Unappealed order, §36-36-116.
Construction of provisions.
Applicability, §36-36-110.
Good faith negotiations, §36-36-119.
Notice of annexation, §36-36-111.
Objection to annexation.
Grounds and procedures, §36-36-113.

ANNEXATION —Cont'd
Arbitration of annexation disputes —Cont'd
Objection to annexation —Cont'd
Majority vote, §36-36-113.
Remedies for violations of conditions, §§36-36-117, 36-36-118.
Service delivery agreement or comprehensive plan.
Prohibition on a changing zoning or land use law, §36-36-112.
Written agreement governing terms of annexation, §36-36-119.
Zoning or land use law.
Prohibition on changing, §36-36-112.
Bona fide land use classification objection, §36-36-11.
Citizen review panel.
Rezoning of annexed property.
Review by panel, membership, §36-36-11.
Construction of article.
Applicability, §36-36-1.
Application by 100 percent of landowners.
Restriction on applicability, §36-36-21.
Effective date, §36-36-2.
Resolution and referendum.
Legislative declaration of policy, §§36-36-50, 36-36-51.
Contracts.
Utility service agreements.
Effect of annexation, §36-36-8.
Deannexation, §36-36-22.
Declaratory judgments.
Application by owners of 60 percent of land and 60 percent of electors.
Determination of validity of annexation, §36-36-39.
Definitions.
Application by 100 percent of landowners.
Contiguous area, §36-36-20.
Application by owners of 60 percent of land and 60 percent of electors.
Contiguous area, §36-36-31.
Municipal corporation, §36-36-30.
Resolution and referendum.
Contiguous area, §36-36-52.
Used for residential purposes, §36-36-52.
Unincorporated islands.
Contiguous area, §36-36-90.
Disputes over land use arising out of rezoning.
Resolution, §36-36-11.

ANNEXATION —Cont'd
Effective date, §36-36-2.
Eminent domain.
County owned property or facilities.
Acquisition by municipality, §36-36-7.
Effect of annexation, §36-36-7.
Extension of services.
Plans and reports, §36-36-35.
Independent school systems.
Commercial zoned property annexed into municipality.
Effective date for ad valorem tax purposes, §36-36-2.
Effective date for determining school enrollment, §36-36-2.
Effective date of annexation, §36-36-2.
Legislative intent, §36-36-10.
Local act.
Copy of proposed legislation provided county governing authority, §36-36-6.
Effective date, §36-36-2.
Maps and plats.
Application by 100 percent of landowners.
Identification of annexed property, §36-36-21.
Municipality identification of annexed area, §36-36-3.
Resolution and referendum.
Map of annexed territory, §36-36-59.
Mediation.
Disputes over rezoning of annexed property, §36-36-11.
Municipal acquisition of county owned property or facilities, §36-36-7.
Municipal home rule.
Deannexed property, §36-35-2.
Notice.
Adjoining county.
Annexation by municipal corporation into, §36-36-23.
Application by owners of 60 percent of land and 60 percent of electors.
Hearing on application, §36-36-36.
Noncompliance application.
Notification of deficiencies, §36-36-34.
County governing authority of proposed annexation.
Notice by municipal governing authority, §36-36-6.
Mailing requirements, §36-36-9.

ANNEXATION —Cont'd
Notice —Cont'd
Municipal or county governing authorities, §36-36-6.
Mailing requirements, §36-36-9.
Residential land, §36-36-16.
Resolution and referendum.
Hearing, §36-36-57.
Zoning or rezoning.
Notice to county governing authority, §36-36-11.
Objections.
Zoning or rezoning of annexed property, §36-36-11.
Ordinances.
Application by owners of 60 percent of land and 60 percent of electors.
Adoption of ordinances, §36-36-37.
Copy of ordinance.
Filing with secretary of state, §36-36-38.
Procedure for resolving annexation disputes, §§36-36-110 to 36-36-119.
Public utilities.
Application by owners of 60 percent of land and 60 percent of electors.
Requiring use of municipal owned utilities by residents of annexed territory, §36-36-40.
Utility service agreements.
Effect of annexation, §36-36-8.
Purpose, §36-36-10.
Referendum.
Land used for residential purposes, §36-36-16.
Reports.
Resolution and referendum.
Extension of services to area proposed to be annexed, §36-36-56.
Approval, availability and distribution of report, §36-36-57.
Residential land.
Procedures for, §36-36-16.
Used for residential purposes, defined, §36-36-15.
Resolution and referendum, §§36-36-50 to 36-36-61.
Adoption of resolution, §36-36-57.
Applicability of article, §36-36-61.
Approval or disapproval of resolution.
Proceedings upon decision, §36-36-58.

ANNEXATION —Cont'd
Resolution and referendum —Cont'd
Area proposed to be annexed.
Extension of services to area.
Plans and reports, §36-36-56.
Approval, availability and distribution of report, §36-36-57.
Standards and requirements, §36-36-54.
Determination of compliance by municipal corporation, §36-36-55.
Authority to annex, §36-36-53.
Authorized expenditures.
Services relating to annexation, §36-36-60.
Conduct of referendum, §36-36-58.
Contents of resolution, §36-36-57.
Definitions.
Contiguous area, §36-36-52.
Used for residential purposes, §36-36-52.
Exceptions to article applicability, §36-36-61.
Expenditures relating to annexation.
Authorized expenditures, §36-36-60.
Hearing, §36-36-57.
Legislative intent, §§36-36-50, 36-36-51.
Map of annexed territory, §36-36-59.
Power of municipal governing body, §36-36-53.
Public policy, §36-36-51.
Purpose of article, §36-36-50.
Recordation.
Copy of resolution and map, §36-36-59.
Restrictions on applicability of article, §36-36-61.
Services.
Authorized expenditures relating to annexation, §36-36-60.
Extension to area proposed to be annexed.
Plans and reports, §36-36-56.
Approval, availability and distribution of report, §36-36-57.
Standards and requirements.
Area proposed to be annexed, §36-36-54.
Determination of compliance by municipal corporation, §36-36-55.
ANNEXATION —Cont'd
Resolution and referendum —Cont'd
Subsequent annexation attempts, §36-36-58.
Scope of article, §36-36-1.
Secretary of state.
Application by 100 percent of landowners.
Filing of identification of annexed property, §36-36-21.
Surveys and surveyors.
Municipality identification of annexed area, §36-36-3.
Taxation.
Application by owners of 60 percent of land and 60 percent of electors.
Municipal ad valorem taxes.
Applicability to annexed territory, §36-36-38.
Effective date of annexation, §36-36-2.
Unincorporated islands.
Aggregate external boundary.
Determination, §36-36-91.
Annexation authorized, §36-36-92.
Exceptions to prohibition to creation, §36-36-4.
When creation prohibited, §36-36-4.
Boundaries.
Aggregate external boundary.
Determination, §36-36-91.
Definitions.
Contiguous area, §36-36-90.
Preclearance by U.S. justice department, §36-36-92.
Procedures, §36-36-92.
Provision of municipal services, §36-36-92.
When creation prohibited, §36-36-4.
United States.
Unincorporated islands.
Preclearance by justice department, §36-36-92.
Used for residential purposes.
Defined, §36-36-15.
Zoning.
Land use following rezoning in conjunction with or subsequent to annexation.
Resolution of disputes, §36-36-11.
Property annexed into a municipality, §36-66-4.

ANTE LITEM NOTICE.
Counties.
Time for presentation of claims, §36-11-1.

ANTE LITEM NOTICE —Cont'd
Municipal corporations.
Actions for injury to person or property.
Written demand as prerequisite, §36-33-5.

ANTENNAE.
Community television systems, §36-62-2.

ANTITERRORISM ACT.
General provisions.
Antiterrorism task force, §§35-3-60 to 35-3-65.
Short title, §35-3-60.

APPEALS.
Annexation.
Application by owners of 60 percent of land and 60 percent of electors.
Declaratory judgment to determine validity of annexation.
Judicial review, §36-36-39.
Arbitration of annexation disputes.
Grounds for appeal, §36-36-116.
Bond issues.
Local governments and political subdivisions.
Validation of bonds, §§36-82-23, 36-82-44.
Revenue bonds, §36-82-77.
Cemeteries.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located.
Decision on permit application, §§36-72-11, 36-72-12.
Crime information center.
Denial of request to modify or correct information, §35-3-37.
Purging, modifying or supplementing of criminal records, §35-3-37.
Development.
Impact fees.
Fee determinations, §36-71-10.
Law enforcement officers.
Peace officers standards and training council.
Disciplinary act, §35-8-7.2.
Local government code enforcement boards.
Adverse agency action.
Appeals to superior courts, §36-74-28.

APPROPRIATIONS.
Criminal justice coordinating council, §35-6A-9.
Homeowner tax relief grants, §36-89-2.
Adjustments to fund eligible assessed value, §36-89-3.
General assembly to specify amount appropriated, §36-89-3.
Municipal corporations.
New municipal corporation created by local act.
Appropriation of funds for grants or loans, §36-31-10.

APPURTENANCES.
County buildings.
Destruction or damages of building or its appurtenances, §36-9-11.

ARBITRATION.
Annexation.
Arbitration of annexation disputes, §§36-36-110 to 36-36-119.
Development impact fees.
Fee disputes, §36-71-10.

ARREST.
Alabama law enforcement officers in fresh pursuit in state.
Authority, §35-1-15.
Aliens.
Illegal aliens, §35-1-17.
Bureau of investigation.
Powers of agents, §35-3-8.
Capitol police division.
Power of arrest, §35-2-122.
County police.
Power to make arrest, §36-8-5.
Florida law enforcement officers in fresh pursuit in state.
Authority, §35-1-15.
Fresh pursuit.
Alabama, Florida, North Carolina, South Carolina, and Tennessee law enforcement officers in fresh pursuit, §35-1-15.
Illegal aliens, §35-1-17.
Law enforcement officers.
Capitol police division.
Power of arrest, §35-2-122.
Fresh pursuit.
Alabama, Florida, North Carolina, South Carolina, and Tennessee law enforcement officers, §35-1-15.

ARREST —Cont'd
North Carolina law enforcement officers in fresh pursuit.
Authority, §35-1-15.
Public safety training center-security force, §35-5-7.
South Carolina law enforcement officers in fresh pursuit.
Authority, §35-1-15.
State patrol.
Violations of criminal laws, §35-2-33.
Tennessee law enforcement officers in fresh pursuit.
Authority, §35-1-15.

ASSEMBLY.
Civil disturbances.
Mutual aid, §§36-69-1 to 36-69-10.

ASSESSMENTS.
Interlocal risk management agencies.
Fund deficiencies.
Assessments upon members, §36-85-15.

ASSIGNMENTS.
Insurance.
Local government employee program funds nonassignable, §36-21-7.

ASSISTED LIVING COMMUNITIES.
Elopement of disabled person from community.
Reporting to local police, time, §35-3-174.
Exonerated first offender's criminal record.
Disclosure.
Person applying for employment with, §35-3-34.1.

ASTROLOGY.
Counties.
Powers of county governing authority as to, §36-1-15.

ATTORNEY GENERAL.
Identity fraud.
Electronic communication records.
Compelling production of, §35-3-4.1.
Local government and political subdivisions.
Refunding bonds.
Validation of bonds.
Issued subsequent to adoption of constitution of 1877.
Petition by district attorney or attorney general to superior court, §36-82-43.

ATTORNEY GENERAL —Cont'd
Local government and political subdivisions —Cont'd
Refunding bonds —Cont'd
Validation of bonds —Cont'd
Issued subsequent to adoption of constitution of 1877 —Cont'd
Petition by holder to district attorney or attorney general, §36-82-42.
Notice of election results to district attorney or attorney general, §36-82-20.
Petition by district attorney or attorney general to superior court, §36-82-21.
Procedure on failure to file petition, §36-82-27.
Revenue bonds.
Validity of bonds.
Failure of district attorney or attorney general to file petition, §36-82-81.
Notice to district attorney or attorney general of resolution authorizing bond, §36-82-74.
Petition by district attorney or attorney general, §36-82-75.
Service of petition and orders, §36-82-75.
New municipal corporation created by local act.
Preclearance responsibilities, §36-31-6.
Public safety.
Board of public safety.
Membership, §35-2-1.
Sexual offenses against minors.
Computers or electronic devices.
Compelling production of electronic communication records, §35-3-4.1.
Voting rights act of 1965.
Submissions by local governments to United States department of justice pursuant to.
Attorney general to receive copy, §36-60-11.

ATTORNEYS.
Criminal history records of defendants or witnesses.
Crime information center.
Duty to make available to defendant's attorney on request, §35-3-34.

ATTORNEYS —Cont'd
Criminal procedure.
Criminal history records of defendants or witnesses.
Crime information center.
Duty to make available to defendant's attorney on request, §35-3-34.
Municipal court criminal proceedings.
Right to counsel, §36-32-1.
Indigent persons.
Municipal court criminal proceedings.
Right to counsel, §36-32-1.
Local government code enforcement boards.
Appointment of legal counsel, §36-74-22.
Presentation of case before board, §36-74-24.
Municipal court criminal proceedings.
Right to counsel, §36-32-1.

ATTORNEYS' FEES.
Nomenclature of municipal and county police departments, §35-10-9.

AUDITS.
Bond issues.
Local government and political subdivisions.
Performance audit or performance review.
Expenditure of bond proceeds, §36-82-100.
Claims against counties, §36-11-2.
Counties.
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.
Group health benefits program for local government employees.
Annual audit, §36-21-4.
Interlocal risk management agencies.
Funds, §36-85-19.
Local government, §36-60-8.
Budgets and audits generally, §§36-81-1 to 36-81-20.
Municipal corporations.
Grants of state funds.
Capital outlay items.
Submission of annual audit to state auditor, §36-40-46.
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.

AUDITS —Cont'd
Municipal corporations —Cont'd
New municipal corporation created by local act.
Special service districts divided into noncontiguous areas, §36-31-12.
Urban residential finance authorities.
Annual audit, §36-41-13.

AUTHORITIES.
County and municipal development authorities, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Development authorities, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Downtown development authorities.
General provisions, §§36-42-1 to 36-42-16.
Local government authorities registration act, §36-80-16.
Motor vehicles.
Decal or seal on vehicles owned or leased by public authorities, §36-80-20.
Public safety and judicial facilities authorities, §§36-75-1 to 36-75-13.
Registration of local government authorities, §36-80-16.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.
Urban residential finance authorities.
General provisions, §§36-41-1 to 36-41-13.

AUXILIARY SERVICE OF STATE PATROL.
Uniform division of department of public safety, §35-2-36.1.

AVIATION.
Department of public safety.
State aviation assets, authority, §35-2-140.
State aviation assets.
Authority of department of public safety, §35-2-140.

AVIATION AUTHORITY.
Department of public safety.
Transfer of personnel, aircraft and other assets to department, §35-2-140.
Transfer of personnel, aircraft, other assets to department of public safety, §35-2-140.

B

BACKDATED LICENSES, PERMITS, OR OTHER AUTHORIZING DOCUMENTS.
Issuance by county or municipal officers or employees.
Prohibited, §36-60-26.

BACKGROUND CHECKS.
Criminal information center.
General provisions, §§35-3-30 to 35-3-40.

BADGES.
Bureau of investigation.
Agents.
Disability in line of duty.
Retention of badge and weapon, §35-3-11.
Bureau of investigation nomenclature act, §§35-3-100 to 35-3-108.
Members of uniform division of department of public safety.
Disability arising in line of duty.
Retention of weapon and badge, §35-2-49.1.
Public safety nomenclature act, §§35-2-80 to 35-2-88.
Special policemen, §35-9-9.
State patrol.
Disability in line of duty.
Retention, §35-2-49.1.
Retirement.
Receipt upon retirement, §35-2-42.
Retention by certain members, §35-2-49.

BALLFIELDS.
Municipal corporations.
Lease of property to nonprofit corporations.
Operation and management of, §36-37-6.

BANKRUPTCY AND INSOLVENCY.
County, municipality or other political subdivision.
Not authorized to seek relief from payment of debts, §36-80-5.

BARRACKS.
Georgia state patrol.
Commissioner of public safety, §§35-2-39, 35-2-40.
Purchase, lease or construction of barracks, §§35-2-40, 35-2-41.

BICYCLES.
Local government.
Road grates.
Installation to accommodate bicycles, §36-60-5.

BIDS AND BIDDING.
Municipal corporations.
Sale of property, §36-37-6.
Public works.
Local government bidding and contracting, §§36-91-1 to 36-91-95.

BLIGHTED AREAS.
Downtown development authorities, §§36-42-1 to 36-42-16.
Urban redevelopment, §§36-61-1 to 36-61-19.

BLOOD SAMPLES.
DNA sampling, collection, analysis.
Persons convicted of felony offenses, §§35-3-160 to 35-3-165.
Persons convicted of felony offenses (eff 1/1/2013), §§35-3-160 to 35-3-165.

BLUE ALERT SYSTEM, §35-3-191.

BOARDS.
Local government code enforcement boards.
Generally, §§36-74-1 to 36-74-50.
Motor vehicles.
Decal or seal on vehicles owned or leased by local government, §36-80-20.

BOATS AND OTHER WATERCRAFT.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Trespass.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.

BOMBS.
Law enforcement officers.
Training and certification, §35-8-25.

BOMB TECHNICIANS.
Training and certification, §35-8-25.

BOND ISSUES.
Actions.
Local government and political subdivisions.
Enforcement of collection by bond holders, §36-82-4.

BOND ISSUES —Cont'd
Allocation system.
Private activity bonds.
Generally, §§36-82-180 to 36-82-202.
Appeals.
Local government and political subdivisions.
Validation of bonds, §§36-82-23, 36-82-44.
Revenue bonds, §36-82-77.
Audits.
Local government and political subdivisions.
Performance audit or performance review.
Expenditure of bond proceeds, §36-82-100.
Commercial paper notes.
Governmental entities authorized to issue bonds.
Authority to issue, securing, renewal, reissuance, §36-82-241.
Definitions, §36-82-240.
Costs.
Local government and political subdivisions.
Validation proceedings, §§36-82-26, 36-82-47.
Revenue bonds, §36-82-80.
Counties.
Local government and political subdivisions, §§36-82-1 to 36-82-85, 36-82-100, 36-82-120 to 36-82-202.
Tax proceeds.
Investment of certain proceeds in authorized bonds, §36-1-8.
Definitions.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds, §36-82-121.
Private activity bonds.
Allocation system, §36-82-182.
Development authorities, §§36-62-8 to 36-62-10.
Bond anticipation notes, §36-62-8.
Findings prerequisite to issuance, §36-62-9.
Indebtedness of state or political subdivisions.
Obligations not deemed to be, §36-62-10.
Powers of authorities, §36-62-6.

BOND ISSUES —Cont'd
Development authorities —Cont'd
Securities act.
Funds not subject to regulation under, §36-62-11.
Downtown development authorities.
Bond anticipation notes, §36-42-11.
Georgia uniform securities act of 2008.
Applicability, §36-42-15.
Proceeds.
Use, §36-42-11.
Public debt.
Obligations of authorities not to constitute, §36-42-12.
Revenue bonds, §§36-42-9, 36-42-10.
Powers of authorities, §36-42-8.
Tax exemption, §36-42-13.
Elections.
Local government and political subdivisions, §§36-82-1 to 36-82-3.
Georgia allocation system.
Private activity bonds.
Generally, §§36-82-180 to 36-82-202.
Highways, roads and streets.
Municipal street improvements, §§36-39-25 to 36-39-27.
Interest.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Investments.
Local government and political subdivisions.
Authorized investments for bond proceeds, §36-82-7.
Local government and political subdivisions, §§36-82-1 to 36-82-85, 36-82-100, 36-82-120 to 36-82-202.
Actions.
Enforcement of collection by bond holders, §36-82-4.
Appeals.
Validation of bonds, §§36-82-23, 36-82-44.
Revenue bonds, §36-82-77.
Audit.
Performance audit or performance review.
Expenditure of bond proceeds, §36-82-100.
Computation of bonded indebtedness.
Sinking fund.
Deduction, §36-82-8.

BOND ISSUES —Cont'd
Local government and political subdivisions —Cont'd
Costs.
Validation of bonds.
Payment of costs of judicial proceedings, §§36-82-26, 36-82-47.
Revenue bonds, §36-82-80.
Destruction of unsold bonds.
Affidavit of witnesses, §36-82-6.
Authorization, §36-82-5.
Notice, §36-82-6.
Order, §36-82-6.
Elections, §§36-82-1 to 36-82-3.
Advertisement of elections, §§36-82-1, 36-82-4.1.
Declaration of result, §36-82-2.
Issuance of bonds upon favorable vote, §36-82-3.
Notice, §§36-82-1, 36-82-4.1.
Expenditure of funds for purposes other than stated in notice, §36-82-4.2.
Returns, §36-82-2.
Voting, §36-82-2.
Expenditure of bond proceeds.
Performance audit or performance review, §36-82-100.
Form and services connected with creation of repayment obligations, §§36-82-140 to 36-82-142.
Hospitals.
Excess proceeds of bonds issued to match state and federal allocations.
Use, §36-60-7.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Interpretation and construction.
Repayment obligations.
Liberal construction of provisions, §36-82-142.
Investments.
Authorized investments for bond proceeds, §36-82-7.
Misdemeanors, §36-82-1.
Notice.
Destruction of unsold bonds, §36-82-6.
Elections, §§36-82-1, 36-82-4.1.
Expenditures for purposes other than stated in notice, §36-82-4.2.

BOND ISSUES —Cont'd
Local government and political subdivisions —Cont'd
Notice —Cont'd
Validation of bonds.
Hearing, §36-82-76.
Notice to district attorney or attorney general of resolution authorizing revenue bonds, §36-82-74.
Parks and recreation.
County and municipal recreation systems, §36-64-7.
Payments in lieu of taxes.
PILOT restriction act, §36-80-16.1.
Pension obligation bonds, §36-82-9.
Performance audit or performance review.
Expenditure of bond proceeds, §36-82-100.
Proceeds.
Investment.
Authorized investments, §36-82-7.
Performance audit or performance review of expenditures, §36-82-100.
Use.
Purposes other than stated in public bond notice, §36-82-4.2.
Surpluses from overestimated projects, §36-82-1.
Public records.
Repayment obligations.
Certain records not public records, §36-82-141.
Receivers.
Revenue bonds.
Default in payment, §§36-82-67 to 36-82-72.
Refunding bonds, §§36-82-1, 36-82-3.
Ordinance or resolution authorizing, §36-82-3.
Tax to pay refunding bonds.
Provision for assessment and collection required prior to issuance, §36-82-7.1.
Regulation of interest rates for municipal, county, etc., bonds, etc., other than general obligation bonds, §§36-82-120 to 36-82-124.
Repayment obligations, §§36-82-140 to 36-82-142.
Contracts with financial institutions to perform repayment functions, §36-82-140.

BOND ISSUES —Cont'd
Local government and political subdivisions —Cont'd
Repayment obligations —Cont'd
Evidence of obligations, §36-82-140.
Facsimile signatures and seals.
Use, §36-82-140.
Interpretation and construction.
Liberal construction of provisions, §36-82-142.
Records of ownership, registration, transfer and exchange.
Not public records, §36-82-141.
Reporting requirements, §36-82-10.
Revenue bonds, §§36-82-60 to 36-82-85, 36-82-100.
Carriers.
Common carriers of passengers for hire.
Applicability to, §36-82-84.
Citation of law.
Short title, §36-82-60.
Common carriers of passengers for hire.
Applicability to, §36-82-84.
Contracts.
Article as enforceable contract with bondholders, §36-82-65.
Default in payment.
Cure of default.
Surrender of receivership upon, §36-82-71.
Receiver, §§36-82-67 to 36-82-72.
Application for receivership by bondholder or trustee, §36-82-67.
Appointment, §36-82-67.
Court supervision, §§36-82-69, 36-82-70.
Duties, §36-82-68.
Legislative intent, §36-82-72.
Powers, §§36-82-68, 36-82-69.
Severability of provisions, §36-82-72.
Supervision by court, §§36-82-69, 36-82-70.
Surrender of receivership upon cure of default, §36-82-71.
Definitions, §36-82-61.
Governmental bodies.
Defined, §36-82-61.
Powers, §36-82-62.
Hospital authorities.
Validation of bonds, §36-82-83.
Interim receipts, §36-82-64.

BOND ISSUES —Cont'd
Local government and political subdivisions —Cont'd
Revenue bonds —Cont'd
Issuance, §36-82-64.
Resolution authorizing, §§36-82-63, 36-82-65.
Legislative intent, §36-82-85.
Negotiability, §36-82-64.
Payment of bonds.
Default.
Receiver, §§36-82-67 to 36-82-72.
Governmental liability, §36-82-66.
Source, §36-82-66.
Resolution authorizing undertaking and issuance, §36-82-63.
Covenants in resolution, §36-82-65.
Severability of provisions, §36-82-85.
Tax exemption, §36-82-64.
Title of law.
Short title, §36-82-60.
Undertakings.
Defined, §36-82-61.
Powers of governmental bodies as to, §36-82-62.
Validation.
Appeals, §36-82-77.
Authorized, §36-82-73.
Costs.
Payment, §36-82-80.
Failure of district attorney or attorney general to file petition.
Procedure upon, §§36-82-81, 36-82-82.
Hearing, §36-82-77.
Notice, §36-82-76.
Hospital authority revenue bonds, §36-82-83.
Judgment of validation, §36-82-77.
Effect, §§36-82-78, 36-82-82.
Entry of reference to judgment on validated bonds, §36-82-79.
Manner of validation, §36-82-73.
Notice of hearing, §36-82-76.
Notice to district attorney or attorney general of resolution authorizing revenue bonds, §36-82-74.
Parties to proceedings, §36-82-77.

BOND ISSUES —Cont'd
Local government and political subdivisions —Cont'd
Revenue bonds —Cont'd
Validation —Cont'd
Petition by district attorney or attorney general to superior court, §36-82-75.
Procedure when district attorney or attorney general fails to file petition, §§36-82-81, 36-82-82.
Resolution authorizing revenue bonds.
Notice to district attorney or attorney general, §36-82-74.
Show cause order, §36-82-75.
Sinking fund.
Deduction in computing bonded indebtedness, §36-82-8.
Sponsoring governmental unit requirement, §§36-82-220 to 36-82-222.
Taxation.
Refunding bonds.
Assessment and collection of tax to pay refunding bonds.
Provision required prior to issuance, §36-82-7.1.
Trusts, §§36-82-220 to 36-82-222.
Construction of provisions, §36-82-222.
Definitions, §36-82-220.
Governmental units sponsoring requirement, §36-82-221.
Sponsoring governmental unit requirement, §36-82-221.
Unsold bonds.
Destruction, §§36-82-5, 36-82-6.
Use.
Counties having population of 250,000 to 400,000, §36-82-4.1.
Validation, §§36-82-20 to 36-82-47.
Appeals, §36-82-23.
Revenue bonds, §36-82-79.
Validation by holders of bonds issued subsequent to adoption of constitution of 1877, §36-82-44.
Attorney general.
Notice to attorney general of election or resolution favoring issuance of bonds or refunding bonds, §36-82-20.

BOND ISSUES —Cont'd
Local government and political subdivisions —Cont'd
Validation —Cont'd
Attorney general —Cont'd
Petition for show cause order, §36-82-21.
Procedure upon failure of attorney general to file petition, §§36-82-27, 36-82-28.
Conclusiveness of judgment, §§36-82-24, 36-82-28.
Costs.
Payment, §§36-82-23, 36-82-47.
Revenue bonds, §36-82-80.
District attorney.
Notice to district attorney of election or resolution favoring issuance of bonds or refunding bonds, §36-82-20.
Petition for show cause order, §36-82-21.
Procedure upon failure of district attorney to file petition, §§36-82-27, 36-82-28.
Entry of reference to judgment of validation on bonds.
Validation by holders of bonds issued subsequent to adoption of constitution of 1877, §36-82-46.
Evidence.
Entry of reference to judgment of validation on bonds, §36-82-25.
Holders of bonds issued subsequent to adoption of constitution of 1877, §§36-82-40 to 36-82-47.
Appeals, §36-82-44.
Authorized, §36-82-40.
Bonds, surety.
Indemnity bonds to be furnished by holder, §36-82-41.
Cause order, §36-82-43.
Costs.
Payment, §36-82-47.
Indemnity bond.
Furnishing by holder, §36-82-41.
Judgment of validation, §36-82-44.
Effect, §36-82-45.
Notice of proceedings, §36-82-46.
Parties to proceedings, §36-82-44.
Petition by district attorney or attorney general to superior court, §36-82-43.

BOND ISSUES —Cont'd
Local government and political subdivisions —Cont'd
Validation —Cont'd
Holders of bonds issued subsequent to adoption of constitution of 1877 —Cont'd
Petition by holder to district attorney or attorney general, §36-82-42.
Procedure, §36-82-40.
Proof of validation, §36-82-46.
Judgment of validation.
Effect, §§36-82-24, 36-82-28.
Revenue bonds, §§36-82-78, 36-82-82.
Validation by holders of bonds issued subsequent to adoption of constitution of 1877, §36-82-45.
Entry of reference to judgment of validation on bonds, §36-82-25.
Revenue bonds, §36-82-79.
Validation by holders of bonds issued subsequent to adoption of constitution of 1877, §§36-82-44, 36-82-45.
Notice.
Election or resolution favoring issuance of bonds or refunding bonds.
Notice to district attorney or attorney general, §36-82-20.
Revenue bonds.
Hearing, §36-82-76.
Resolution authorizing revenue bonds, notice to district attorney or attorney general, §36-82-74.
Show cause order.
Hearing on, §36-82-22.
Validation by holders of bonds issued subsequent to adoption of constitution of 1877, §36-82-46.
Show cause order.
Hearing on, §§36-82-21, 36-82-23.
Notice, §36-82-22.
Petition for, §36-82-21.
Procedure upon failure of district attorney or attorney general to file petition, §§36-82-27, 36-82-28.
Revenue bonds, §36-82-75.

BOND ISSUES —Cont'd
Local government and political subdivisions —Cont'd
Validation —Cont'd
Show cause order —Cont'd
Service of petition and order, §36-82-21.
Validation by holders of bonds issued subsequent to adoption of constitution of 1877, §36-82-43.
Municipal bonds.
General provisions, §§36-38-1 to 36-38-23.
Local government and political subdivisions, §§36-82-1 to 36-82-85, 36-82-100, 36-82-120 to 36-82-202.
Political subdivisions.
Local government and political subdivisions, §§36-82-1 to 36-82-85, 36-82-100, 36-82-120 to 36-82-202.
Private activity bonds.
Allocation system, §§36-82-180 to 36-82-202.
Applicability of provisions, §36-82-202.
Carryforward election application, §36-82-199.
Defined, §36-82-182.
Information to accompany, §36-82-199.
Mortgage credit certificate carryforward election, §36-82-200.
Carryforward funds.
Flexible share, §36-82-198.
Citation of article.
Short title, §36-82-180.
Confirmation of bond issue, §36-82-185.
Definitions, §36-82-182.
Department of community affairs.
Administration of provisions, §36-82-183.
Commissioner.
Defined, §36-82-182.
Definition of department, §36-82-182.
Powers, §36-82-183.
Records, §36-82-184.
Economic development share, §36-82-186.
Defined, §36-82-182.

BOND ISSUES —Cont'd
Private activity bonds —Cont'd
Allocation system —Cont'd
Economic development share —Cont'd
Notice of allocation, §36-82-186.
Application for, §36-82-187.
Employment test, §36-82-188.
Transfer of funds to flexible share, §36-82-197.
Flexible share, §36-82-193.
Amount, §36-82-193.
Carryforward funds, §36-82-198.
Defined, §36-82-182.
Notice of allocation, §36-82-194.
Application for, §36-82-194.
Transfers of funds to, §36-82-197.
Guidelines for making allocations.
Policy guidelines, §36-82-195.
Factors in applying, §36-82-196.
Housing share, §36-82-189.
Amount, §36-82-189.
Defined, §36-82-182.
Notice of allocation.
Qualified residential rental project, §36-82-192.
Single-family bond project, §36-82-191.
Reservations from, §36-82-190.
Transfer, §36-82-190.
Transfers of funds to flexible share, §36-82-197.
Legislative declaration, §36-82-181.
Mortgage credit certificate carryforward election, §36-82-200.
Notice of allocation.
Application for, §36-82-185.
Economic development share, §36-82-187.
Flexible share, §36-82-194.
Housing share, §§36-82-191, 36-82-192.
Economic development share, §36-82-186.
Application, §36-82-187.
Employment test, §36-82-188.
Flexible share, §36-82-194.
Application, §36-82-194.
Issuance, §36-82-185.
Policy guidelines for making allocations, §36-82-195.
Factors in applying, §36-82-196.
Purpose of provisions, §36-82-181.
Scope of provisions, §36-82-202.

BOND ISSUES —Cont'd
Private activity bonds —Cont'd
Allocation system —Cont'd
State ceiling.
Allocation and assignment.
Deemed allocated and assigned, §36-82-201.
Defined, §36-82-182.
Determination, §36-82-184.
Title of article.
Short title, §36-82-180.
Public safety and judicial facilities authorities, §§36-75-7 to 36-75-10.
Receivers.
Local government and political subdivisions.
Revenue bonds.
Default in payment, §§36-82-67 to 36-82-72.
Redevelopment.
Payment of redevelopment costs, §36-44-13.
Tax allocation bonds, §36-44-14.
Bond anticipation notes, §36-44-14.
Defined, §36-44-3.
Payment of redevelopment costs from proceeds, §36-44-13.
Urban redevelopment, §§36-61-12, 36-61-13.
Resource recovery development authorities, §§36-63-9, 36-63-10.
Indebtedness of state or political subdivisions.
Obligations not deemed to be, §36-63-10.
Powers of authorities, §36-63-8.
Urban residential finance authorities, §§36-41-5, 36-41-8 to 36-41-11.
Pledge of assets for payment of bonds, §36-41-9.
Public debt.
Bonds or obligations not to constitute, §36-41-10.
Refunding bonds, §36-41-8.
Tax exemption, §36-41-11.
Trusts and trustees, §36-41-5.

BONDS, SURETY.
County law libraries.
Secretary-treasurer of board, §36-15-3.
County police, §36-8-3.
County surveyors, §36-7-5.
Interlocal risk management agencies.
Administrator.
Fidelity bond, §36-85-11.

BONDS, SURETY —Cont'd
Municipal courts.
Appearance bonds.
Forfeiture.
Authority of municipal corporations to provide for, §36-32-4.
Performance bonds.
Public works.
Local government bidding and contracting, §§36-91-70 to 36-91-72.
Public safety.
Department of public safety.
Comptroller, §35-2-8.

BONES.
Abandoned cemeteries and burial grounds.
Human remains or burial objects.
Disinterment and disposition.
Development of land on which abandoned cemetery located, §36-72-15.

BOOKSTORES.
Adult bookstores, §36-60-3.

BOTANICAL GARDENS.
Municipal corporations.
Leases and contracts for operation and maintenance.
Municipal corporations having population of more than 300,000, §36-34-5.2.

BOUNDARIES.
Annexation.
General provisions, §§36-36-1 to 36-36-92.
Counties.
Change of boundaries, §§36-3-1 to 36-3-5.
Mutual agreement evidenced by concurrent unanimous resolution, §36-3-21.1.
Settlement of boundary disputes, §§36-3-20 to 36-3-27.
Streams.
Jurisdiction of counties divided by water, §36-1-2.
Municipal corporations.
Annexation.
General provisions, §§36-36-1 to 36-36-92.
Municipal home rule.
Change of boundaries.
Local act or general law, §36-35-2.

BRIBERY.
Notices of allocation, §36-82-185.

BRIDGES.
County bridges, §§36-14-1 to 36-14-3.

BROADBAND COMMUNICATIONS.
Advanced broadband collocation act, §§36-66B-1 to 36-66B-4.

BUDGETS.
Counties.
Electronic transmission of budgets, §36-80-21.
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.
Criminal justice coordinating council.
Preparation of budget requests, §35-6A-9.
Local board of education.
Electronic transmission of budgets, §36-80-21.
Local government.
Budgets and audits generally, §§36-81-1 to 36-81-20.
Electronic transmission of budgets, §36-80-21.
Municipal corporations.
Electronic transmission of budgets, §36-80-21.
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.

BUILDING CODES.
Counties.
Building, electrical and other codes, §§36-13-1 to 36-13-12.

BUILDINGS AND HOUSING.
Counties.
Building, electrical and other codes.
General provisions, §§36-13-1 to 36-13-12.
Demolition.
County courthouses, §36-9-2.1.
Development authorities.
Powers generally, §36-62-6.
Local governmental powers.
Generally, §36-61-8.
Ordinances relating to demolition of dwellings unfit for human habitation, §36-61-11.
Resource recovery development authorities.
Powers generally, §36-63-8.

BUILDINGS AND HOUSING —Cont'd
Demolition —Cont'd
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Development impact fees, §§36-71-1 to 36-71-13.
Zoning.
Conflicts of interest, §§36-67A-1 to 36-67A-6.
Procedures generally, §§36-66-1 to 36-66-6.

BULLETIN BOARD SYSTEMS.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Electronically furnishing obscene material to minors, §35-3-4.1.

BURDEN OF PROOF.
Crime information center.
Appeal of denial of request to modify or correct information.
De novo review, standard of proof, §35-3-37.

BUREAU OF INVESTIGATION, §§35-3-1 to 35-3-13.
Agents.
Badges.
Disability in line of duty.
Retention of badge and weapon, §35-3-11.
Disability in line of duty.
Retention of badge and weapon, §35-3-11.
Injury in line of duty.
Medical and surgical expenses, §35-3-12.
Narcotic agents, §35-3-9.
Personnel board.
Applicability of rules of board, §35-3-11.
Powers, §35-3-8.
Narcotic agents, §35-3-9.
State personnel administration.
Applicability to agents, §35-3-11.
Weapons.
Disability in line of duty.
Retention of badge and weapon, §35-3-11.
Agreements for provision of services and material.
Director or commissioner, §35-3-7.
Alert systems for emergency notifications.
Blue alert system, §35-3-191.

BUREAU OF INVESTIGATION —Cont'd
Alert systems for emergency notifications —Cont'd
Missing disabled adults, §§35-3-170 to 35-3-180.
Unapprehended murder or rape suspects.
Kimberly's call, §35-3-190.
Antiterrorism task force.
General provisions, §§35-3-60 to 35-3-65.
Arrest.
Powers of agents, §35-3-8.
Assistance to other law enforcement agencies.
Power of bureau, §35-3-8.1.
Blue alert system, §35-3-191.
College study or degree.
Incentive pay, §35-2-42.
Creation, §35-3-2.
Crime information center.
General provisions, §§35-3-30 to 35-3-40.
Criminal justice coordinating council.
Assigned to bureau, §35-6A-2.
Definitions, §35-3-1.
Crime information center, §35-3-30.
Director of investigation, §§35-3-5, 35-3-6.
Agreements for provision of services and material, §35-3-7.
Blue alert system.
Development and implementation, §35-3-191.
Duties, §35-3-5.
Employees' retirement system.
Participation in, §35-3-10.
Kimberly's call.
Alert system for unapprehended murder or rape suspects.
Coordinator of system, §35-3-190.
Mattie's call act.
Alert system for missing disabled adults.
Activation of alert system, §35-3-176.
Coordinator of system, §35-3-173.
Termination of activation, §35-3-179.
District attorneys.
Investigation of criminal matters.
Requests for, §35-3-13.
Division of forensic sciences, §§35-3-150 to 35-3-155.

BUREAU OF INVESTIGATION
—Cont'd
Divisions, §35-3-3.
DNA sampling, collection, analysis.
Persons convicted of felonies.
DNA data bank.
Storage of profiles, §35-3-160.
Generally, §§35-3-160 to 35-3-165.
Persons convicted of felonies (eff 1/1/2013).
DNA data bank.
Storage of profiles, §35-3-160.
Generally, §§35-3-160 to 35-3-165.
Drugs.
Narcotic agents, §35-3-9.
Duties, §35-3-4.
Employees' retirement system of Georgia.
Participation by personnel and director in system, §35-3-10.
Fires.
Investigation of crime related fires.
Requests by heads of fire department, §35-3-13.
Forensic sciences division, §35-3-13.
Incentive pay.
College study or degree, §35-2-42.
Injuries to members in line of duty.
Medical and surgical expenses, §35-3-12.
Kimberly's call.
Statewide alert system for unapprehended murder or rape suspects determined to be serious public threats, §35-3-190.
Mattie's call act.
Statewide alert system for missing disabled adults, §§35-3-170 to 35-3-180.
Missing children information center.
General provisions, §§35-3-80 to 35-3-85.
Narcotic agents, §35-3-9.
Nomenclature act of 1995, §§35-3-100 to 35-3-108.
Powers, §35-3-4.
Assistance to other law enforcement agencies, §35-3-8.1.
Radios.
Wavelength of radio system adopted by bureau.
Unauthorized use, §35-1-5.
Searches and seizures.
Powers of agents, §35-3-8.
State personnel administration.
Agents.
Applicability to, §35-3-11.

BUREAU OF INVESTIGATION
—Cont'd
State personnel administration
—Cont'd
Director of investigation.
Classification in system, §35-3-6.
State personnel board.
Director of investigation.
Classification in system, §35-3-6.
Status, §35-3-2.
Trafficking of persons for labor or sexual servitude.
Duty to investigate violations, §35-3-4.
Subpoena power for investigating violations, §35-3-4.3.
Weapons.
Powers of agents to carrying firearms, §35-3-8.

BUREAU OF INVESTIGATION NOMENCLATURE ACT, §§35-3-100 to 35-3-108.
Bureau symbols.
Permission required for use, §35-3-103.
Procedures for use, §35-3-104.
Civil penalties.
Violations, §35-3-106.
Damage suits, §35-3-107.
Definitions, §35-3-101.
Injunction against violations, §35-3-105.
Nomenclature of bureau.
Permission required for use, §35-3-102.
Procedure, §35-3-104.
Permission to use nomenclature required, §35-3-102.
Short title, §35-3-100.
Symbols of bureau.
Permission required for use, §35-3-103.
Procedure, §35-3-104.
Violations.
Civil penalties, §35-3-106.
Criminal penalties, §35-3-108.
Damage suits against violators, §35-3-107.
Injunctions, §35-3-105.

BURGLAR AND FIRE ALARM INSTALLERS.
Local governments.
Installation, service, sale, etc., by locality, §36-60-12.

BURGLARY.
Motor vehicles.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.

BURIAL.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Counties.
Indigent persons.
Interment of deceased indigents, §36-12-5.

BURIAL EXPENSES.
Counties.
Indigent persons.
Interment of deceased indigents, §36-12-5.

BUSINESS ENTERPRISE ZONE EMPLOYMENT, §§36-88-1 to 36-88-10.

BUSINESSES.
County or municipal business license, occupational tax certificate, other document required to operate business.
Evidence of state licensure prior to issuance, §36-60-6.
Federal work authorization program.
Evidence of authorization to use upon renewal, §36-60-6.
Federal work authorization program.
Registration with, utilization, requirement, §36-60-6.
Business license or document required to operate business.
Evidence of authorization to use, §36-60-6.

BUSINESS IMPROVEMENT DISTRICTS.
City business improvement districts, §§36-43-1 to 36-43-9.

BUTTOCKS.
Adult bookstores, §36-60-3.
Electronically furnishing obscene materials to minors, §35-3-4.1.

C

CABLE TELEVISION.
Competition among providers, §§36-90-1 to 36-90-8.
Antitrust laws apply to public service providers, §36-90-8.

CABLE TELEVISION —Cont'd
Competition among providers —Cont'd
Authorizing public provider to provide service.
Notice to private providers.
Intention by franchising authority to begin authorization process, §36-90-3.
Business plan to provide service.
Public provider to prepare, §36-90-3.
Definitions, §36-90-2.
Feasibility analysis conducted by franchising authority.
Public providers providing service, §36-90-3.
Financial reports.
Accounting methods for financial reports, §36-90-4.
Records of actual costs and revenues, §36-90-4.
Franchise agreements, §36-90-5.
Local government cable fair competition act of 1999.
Short title of act, §36-90-1.
Notice of public hearings.
Hearing held prior to granting authorization to public provider, §36-90-3.
Notice to private providers.
Intention by franchising authority to begin authorization process, §36-90-3.
Open meetings laws apply to public service providers, §36-90-7.
Present and future needs of community not met by private providers.
Plan submitted by private providers to address needs, §36-90-3.
Publication of notice of public hearings.
Hearings held prior to granting authorization to public provider, §36-90-3.
Public hearings.
Holding prior to granting authorization to public provider, §36-90-3.
Rates charged for services, §36-90-6.
Short title of act, §36-90-1.
Subsidized costs for services required by statute, §36-90-6.

CABLE TELEVISION —Cont'd
Consumer choice for television act, §§36-76-1 to 36-76-11.
Cable service and video service providers.
Affirmative declaration of compliance with Georgia utility facility protection act, §36-76-4.
Definitions, §36-76-2.
Nonexclusive grant of authority to provide services, §36-76-4.
Public schools and public libraries.
Complimentary basic cable service or video service, §36-76-9.
Customer service requirements, §36-76-7.
Definitions, §36-76-2.
Discrimination against residential subscribers, §36-76-11.
Fees.
Franchise fees, §36-76-6.
State franchise application fee, §36-76-4.
PEG access channel.
Reasonable guidelines for use, §36-76-10.
Public schools and public libraries.
Complementary basic cable service or video service, §36-76-9.
Rulemaking authority.
Customer service standards, §36-76-7.
Short title, §36-76-1.
State franchises.
Application process for the issuance, §36-76-4.
Build-out requirement limitations, §36-76-10.
Contents of application, §36-76-4.
Discrimination against residential subscribers.
Prohibited, §36-76-11.
Duration of franchise agreement, §36-76-3.
Franchise fees, §36-76-6.
Franchise options, §36-76-3.
Limitations on requirements imposed upon holders of a state franchise, §36-76-10.
Modification of a state franchise, §36-76-5.
Negotiated franchise agreement, §36-76-3.
Noncommercial PEG programming, §36-76-8.
PEG channels, §36-76-8.
Public, educational, and governmental programming, §36-76-8.
Qualification for PEG channels, §36-76-8.
Service outlet to municipalities and counties, §36-76-9.
Termination of a state franchise, §36-76-5.
Transfer of a state franchise, §36-76-5.
Title of act, §36-76-1.
County regulation, §§36-18-1 to 36-18-5.
Applicability of provisions.
Exceptions, §36-18-5.
Definition of cable television system, §36-18-1.
Exceptions to provisions, §36-18-5.
Franchises.
Provisions not to be construed to impair, §36-18-4.
Restrictions on authority of counties and municipalities, §§36-18-2, 36-18-3.
Governing authority of counties.
Powers, §36-18-2.
Legislative intent, §36-18-4.
Expedited franchising of cable and video services, §§36-76-1 to 36-76-11.
Kimberly's call.
Recruitment of assistance in developing and implementing the alert system, §35-3-190.
Mattie's call act.
Recruitment of assistance in developing and implementing the alert system, §35-3-175.
State franchises.
Consumer choice for television act.
Application process for the issuance, §36-76-4.
Build-out requirement limitations, §36-76-10.
Contents of application, §36-76-4.
Discrimination against residential subscribers.
Prohibited, §36-76-11.
Duration of franchise agreement, §36-76-3.

CABLE TELEVISION —Cont'd
State franchises —Cont'd
Consumer choice for television act —Cont'd
Franchise fees, §36-76-6.
Franchise options, §36-76-3.
Limitations on requirements imposed upon holders of a state franchise, §36-76-10.
Modification of a state franchise, §36-76-5.
Negotiated franchise agreement, §36-76-3.
Noncommercial PEG programming, §36-76-8.
PEG channels, §36-76-8.
Public, educational, and governmental programming, §36-76-8.
Qualification for PEG channels, §36-76-8.
Service outlet to municipalities and counties, §36-76-9.
Termination of a state franchise, §36-76-5.
Transfer of a state franchise, §36-76-5.

CADET TROOPERS.
Uniform division of department of public safety.
Employment, §35-2-36.
Governed by rules and regulations established under Chapter 28 of Title 45, §35-2-42.

CAMPUSES.
Local emergency defined, §36-69-2.

CAMPUS POLICE.
Emergency response and vehicular pursuit policies.
Agencies to adopt, crossing jurisdictions, policies to address, failure to adopt, funding withheld, §35-1-14.
High-speed police chases, §35-1-14.

CAPITOL BUILDINGS AND GROUNDS.
Jurisdiction.
Capitol police division, §35-2-122.
Law enforcement officers.
Capitol police division, §§35-2-120 to 35-2-124.

CAPITOL OF STATE.
Security guards to protect executive department at state capitol, §35-2-73.

CAPITOL POLICE DIVISION, §§35-2-120 to 35-2-124.
Costs of performing duties.
Reimbursement, §35-2-124.
Definitions, §35-2-120.
Duties, §35-2-122.
Establishment, §35-2-121.
Jurisdiction, §35-2-122.
Off-duty law enforcement officers.
Use of vehicles, §35-2-123.
Parking and traffic laws.
Enforcement, §35-2-122.
Powers, §35-2-122.
Reimbursement for costs, §35-2-124.
Staffing, §35-2-121.

CAPITOL SQUARE.
Capitol police division.
General provisions, §§35-2-120 to 35-2-124.
Jurisdiction, §35-2-122.
Jurisdiction.
Capitol police division, §35-2-122.

CARRY FORWARDS.
Private activity bond financing.
Carry forward applications, §36-82-199.
Defined, §36-82-182.
Flexible share carry forward funds, §36-82-198.
Mortgage credit certificate carry forward election, §36-82-200.

CATTLE.
County and municipal bonds.
Revenue bonds.
Undertaking defined, §36-82-61.

CD-ROM.
Electronically furnishing obscene material to minors, §35-3-4.1.

CELL PHONES.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Identity fraud.
Compelling production of electronic communications records, §35-3-4.1.

CEMETERIES.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Definitions, §36-72-2.
Descendants.
Defined, §36-72-2.
Development of land on which cemetery located.
Identification and notification of descendants, §36-72-6.
Development of land on which cemetery located.
Application.
Contents, §36-72-5.
Descendants.
Identification and notification, §36-72-6.
Disinterment and disposition of human remains or burial objects, §36-72-15.
Human remains or burial objects.
Disinterment and disposition, §36-72-15.
Misdemeanors.
Violations, §36-72-16.
Mitigation of harm to cemetery.
Expending private or public funds, §36-72-14.
Permit, §36-72-4.
Appeal of decision on application, §§36-72-11, 36-72-12.
Application, §36-72-5.
Board or commission to review applications in certain counties, §36-72-9.
Fee, §36-72-10.
Board or commission to review application.
Establishment in certain counties, §36-72-9.
Factors considered in decision on application, §36-72-8.
Hearing on application, §36-72-7.
Inspection to insure applicant's compliance, §36-72-13.
Issues in decision on application, §36-72-8.
Required, §36-72-4.
Time for decision on application, §36-72-7.
Superior court.
Jurisdiction, §36-72-14.
Violations.
Penalties, §36-72-16.
Findings of legislature, §36-72-1.

CEMETERIES —Cont'd
Abandoned cemeteries and burial grounds —Cont'd
Legislative declaration, §36-72-1.
Powers of counties and municipalities.
Preservation of abandoned cemeteries, §36-72-3.
Preservation and protection.
Authority of counties and municipalities, §36-72-3.
Defined, §36-72-2.
Appeals.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located.
Permit.
Decision on application, §§36-72-11, 36-72-12.
Department of transportation.
Development of land on which cemetery located.
Permit not required unless human remains relocated, §36-72-14.
Development of land on which cemetery located.
Application.
Contents, §36-72-5.
Department of transportation.
Permit not required unless human remains relocated, §36-72-14.
Descendants.
Identification and notification, §36-72-6.
Disinterment and disposition of human remains or burial objects, §36-72-15.
Human remains or burial objects.
Disinterment and disposition, §36-72-15.
Misdemeanors.
Violations, §36-72-16.
Mitigation of harm to cemetery.
Expending private or public funds, §36-72-14.
Permit, §36-72-4.
Appeal of decision on application, §§36-72-11, 36-72-12.
Application, §36-72-5.
Board or commission to review applications in certain counties, §36-72-9.
Fee, §36-72-10.
Board or commission to review application.
Establishment in certain counties, §36-72-9.

CEMETERIES —Cont'd
Development of land on which cemetery located —Cont'd
Permit —Cont'd
Factors considered in decision on application, §36-72-8.
Hearing on application, §36-72-7.
Inspection to insure applicant's compliance, §36-72-13.
Issues in decision on application, §36-72-8.
Required, §36-72-4.
Time for decision on application, §36-72-7.
Superior court.
Jurisdiction, §36-72-14.
Violations.
Penalties, §36-72-16.
Fees.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located.
Permit.
Application fee, §36-72-10.
Inspections.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located.
Permit.
Inspection to insure applicant's compliance, §36-72-13.
Municipal corporations.
Disposition of municipal property generally, §36-37-6.
Trusts and trustees.
Funds donated to cemetery.
Municipal corporation as trustee of, §36-37-5.
Receipt of cemetery or burial lots in trust, §36-37-4.
Notice.
Abandoned cemeteries.
Development on which cemetery located.
Notice to descendants, §36-72-6.

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.
Taxicabs and vehicles for hire.
Requirement to obtain certificate, §36-60-25.

CERTIORARI.
Costs for county law libraries.
Additional costs in certain court cases, §36-15-9.

CHAPLAINS.
Police chaplains.
Training and certification, §35-8-13.

CHARCOAL.
Resource recovery development authorities.
Project defined, §36-63-4.

CHARITIES.
Counties.
Appropriations for charitable grants or contributions.
Counties having population of 400,000 or more, §36-1-19.1.

CHAT ROOMS.
Computer or electronic pornography and child exploitation, §35-3-4.1.

CHILD CARE.
Employees' records checks.
Exchange of national criminal history background information, §35-3-34.2.

CHILD-CARING INSTITUTIONS.
Criminal records checks.
Employees.
Exchange of national criminal history background information, §35-3-34.2.

CHILD MOLESTATION.
Computer on-line service or internet service.
Soliciting, seducing, luring or enticing child, §35-3-4.1.
Obscene telephone contact, §35-3-4.1.

CHILD-PLACING AGENCIES.
Criminal records checks.
Employees.
Exchange of national criminal history background information, §35-3-34.2.

CHILD PORNOGRAPHY.
Computer or electronic pornography and child exploitation, §35-3-4.1.

CHILDREN.
Missing children.
Information center.
General provisions, §§35-3-80 to 35-3-85.

CHILD SEXUAL EXPLOITATION, §35-3-4.1.
Computer-online service or internet service.
Soliciting, seducing, luring or enticing child, §35-3-4.1.

CHOICE OF LAW.
Local government code enforcement boards.
Additional enforcement methods, §36-74-30.

CITATIONS.
Counties.
Building, electrical and other codes.
Violations, §36-13-5.1.
Ordinance or code violations in certain counties, §36-1-17.

CITIES.
Annexation.
General provisions, §§36-36-1 to 36-36-92.
Audits.
Local government budgets and audits generally, §§36-81-1 to 36-81-20.
Bond issues.
Municipal bonds generally, §§36-38-1 to 36-38-23.
Budgets and audits.
Local government budgets and audits generally, §§36-81-1 to 36-81-20.
City business improvement districts.
General provisions, §§36-43-1 to 36-43-9.
Development authorities.
County and municipal development authorities, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Development impact fees.
General provisions, §§36-71-1 to 36-71-13.
Downtown development authorities.
General provisions, §§36-42-1 to 36-42-16.
Emergencies.
Mutual aid, §§36-69-1 to 36-69-10.
Insurance.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.

CITIES —Cont'd
Interest rates on obligations other than general obligation bonds.
Local government and political subdivisions, §§36-82-120 to 36-82-124.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Investments.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Local government authorities registration act, §36-80-16.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Merger of municipal government with county, §§36-68-1 to 36-68-4.
Municipal bonds.
General provisions, §§36-38-1 to 36-38-23.
Municipal courts.
General provisions, §§36-32-1 to 36-32-40.
Municipal home rule.
General provisions, §§36-35-1 to 36-35-8.
Municipal street improvements.
General provisions, §§36-39-1 to 36-39-34.
Municipal training.
General provisions, §§36-45-1 to 36-45-9.
Planning.
Coordinated and comprehensive planning by counties and municipalities, §§36-70-1 to 36-70-5.
Redevelopment.
Powers of counties and municipalities generally, §§36-44-1 to 36-44-23.
Registration.
Local government authorities, §36-80-16.
Urban residential finance authorities.
General provisions, §§36-41-1 to 36-41-13.
Zoning.
Procedures generally, §§36-66-1 to 36-66-6.

CITY BUSINESS IMPROVEMENT DISTRICT ACT.
General provisions, §§36-43-1 to 36-43-9.
Short title, §36-43-1.

CITY BUSINESS IMPROVEMENT DISTRICTS, §§36-43-1 to 36-43-9.
Citation of act.
Short title, §36-43-1.
Definitions, §36-43-2.
District plan.
Adoption, §§36-43-4, 36-43-5.
Defined, §36-43-3.
Duration, §36-43-9.
Financing, §36-43-6.
Segregation of funds, §36-43-7.
Findings of legislature, §36-43-2.
Legislative declaration, §36-43-2.
Notice.
District plan.
Hearing on adoption, §36-43-5.
Petitions.
District plan.
Adoption, §36-43-5.
Powers of municipalities with respect to, §36-43-4.
Design and rehabilitation standards, §36-43-8.
Taxation.
Financing of districts, §36-43-6.
Segregation of funds, §36-43-7.
Powers of municipalities with respect to district, §36-43-4.
Termination, §36-43-9.
Title of act.
Short title, §36-43-1.

CIVIL DISTURBANCES.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.

CIVIL SERVICE.
County civil service systems, §36-1-21.

CLAIMS AGAINST COUNTIES, §§36-11-1 to 36-11-7.
Audits, §36-11-2.
Interest.
Orders presented and not paid, §36-11-5.
Judgments.
Satisfaction of judgment against county, §36-11-7.

CLAIMS AGAINST COUNTIES —Cont'd
Motor vehicle claims.
Waiver of immunity.
Local government entities, §§36-92-1 to 36-92-5.
Negotiability of county orders, §36-11-6.
Order in which county debts paid, §36-11-4.
Order on treasurer for claim.
Interest on orders presented and not paid, §36-11-5.
Issuance, §36-11-2.
Negotiability of county orders, §36-11-6.
Order in which debts paid, §36-11-4.
Registration of orders issued, §36-11-3.
When orders to be paid, §36-11-3.
Presentation of claims.
Time for, §36-11-1.
Registration, §36-11-2.
Orders on treasurer for claims, §36-11-3.
Time for presentation, §36-11-1.
Waiver of immunity.
Motor vehicle claims.
Local government entities, §§36-92-1 to 36-92-5.

CLAIMS AGAINST LOCAL GOVERNMENT ENTITIES.
Motor vehicle claims.
Immunity, waiver, §§36-92-1 to 36-92-5.
Construction and interpretation.
Effective date of provisions, §36-92-5.
Definitions, §36-92-1.
Effective date of chapter, §36-92-5.
Generally, §36-92-2.
Jurisdiction.
Superior court wherein entity lies, §36-92-4.
Negligent use of motor vehicle, §36-92-2.
No employee liability, §36-92-3.
Pleadings.
Party defendants, §36-92-3.
Punitive or exemplary damages, §36-92-4.
Recovery of interest, §36-92-2.
Scope of employment.
Criteria for liability, §36-92-2.
Settlement constitutes bar, §36-92-3.
Sources for payment of settled claims, §36-92-4.

CLAIMS AGAINST LOCAL GOVERNMENT ENTITIES —Cont'd
Motor vehicle claims —Cont'd
Immunity, waiver —Cont'd
Witnesses.
Local government officer or employee as witness, §36-92-3.
Workers' compensation.
No waiver of remedy under act, §36-92-3.

CLAIRVOYANTS.
Counties.
Powers of county governing authorities as to, §36-1-15.

CLEARINGHOUSES.
Criminal justice coordinating council.
Functions and authority, §35-6A-7.
Missing children information.
Powers and duties of center, §35-3-82.

CLERKS OF COURT.
Municipal courts.
Training required, §36-32-13.

CLINICS.
Municipal corporations.
Power to establish facilities and services, §36-34-4.

CLOTHING.
Paupers.
Persons deemed eligible for benefits, §36-12-2.
State patrol.
Clothing allowance, §35-2-52.
Excess clothing and equipment storeroom, §35-2-51.

CODE OF ORDINANCES AND RESOLUTIONS.
Local governing authorities.
General codification, §36-80-19.

COINSUREDS.
Interlocal risk management agencies.
Joint purchase of insurance.
Municipalities or counties to be, §36-85-2.

COMMERCE AND TRADE.
City business improvement districts, §§36-43-1 to 36-43-9.

COMMERCE AND TRADE —Cont'd
Development impact fees, §§36-71-1 to 36-71-13.

COMMERCIAL PAPER NOTES.
Governmental entities.
Authority to issue, securing, renewal, reissuance, §36-82-241.
Definitions, §36-82-240.

COMMISSIONS.
Motor vehicles.
Decal or seal on vehicles owned or leased by local government, §36-80-20.
State victim services commission, §§35-6-1 to 35-6-4.
Victim services commission, §§35-6-1 to 35-6-4.

COMMON OWNERSHIP.
Cable television system.
Defined, §36-18-1.

COMMUNICATIONS OFFICERS.
Basic training course, §35-8-23.
Public safety training center.
Administration and coordination of training, §35-5-5.

COMMUNITY AFFAIRS.
Department of community affairs.
Inactive municipalities.
Filing of certification of inactive status, §36-31-2.

COMMUNITY ANTENNA TELEVISION.
Development authorities generally, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.

COMPACTS.
Criminal history information.
Privacy compact, §35-3-39.1.

COMPROMISE AND SETTLEMENT.
Claims against local government entities.
Settlement constitutes bar, §36-92-3.
Municipal corporations.
Bonded debt, §36-38-20.

COMPULSORY REPAIR AND REHABILITATION OF BUILDINGS.
Powers of municipalities and counties, §36-61-8.

COMPUTER RELATED OFFENSES.
Electronically furnishing obscene materials to minors, §35-3-4.1.

COMPUTERS.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Counties.
Failure or malfunction of computer software.
Immunity from liability for losses, §36-60-20.
Identity fraud.
Compelling production of electronic communication records, §35-3-4.1.
Municipal corporations.
Failure or malfunction of computer software.
Immunity from liability for losses, §36-60-20.
Sexual offenses against minors.
Computers or electronic devices.
Compelling production of electronic communication records, §35-3-4.1.

CONFIDENTIALITY OF INFORMATION.
Crime information center.
Privacy compact, §35-3-39.1.
Restricted access to individual's criminal history record information, §35-3-37.
Unauthorized requests and disclosures of criminal history record information, §35-3-38.
DNA analysis.
Criminal investigations.
Privacy compact, §35-3-39.1.
Persons convicted of felony offenses (eff 1/1/2013).
Results of analysis, §35-3-162.
Genetic testing.
Criminal investigations.
Privacy compact, §35-3-39.1.
Law enforcement officers.
Employment records, §35-8-15.
Terrorism.
Antiterrorism task force.
Investigative reports and identity of agents, §35-3-64.

CONFLICTS OF INTEREST.
Counties.
County surveyors.
Appointment of disinterested surveyor when county surveyor interested, §36-7-14.
Purchases from interested county governing authority or county officer, §36-1-14.
Speculation in county orders by county officer, §36-1-13.
Zoning generally, §§36-67A-1 to 36-67A-6.
Development authorities.
Directors, §36-62-5.
Downtown development authorities.
Directors, §36-62A-1.
Municipal corporations.
Governing authorities.
Voting upon questions by interested members, §36-30-6.
Zoning generally, §§36-67A-1 to 36-67A-6.
Redevelopment, §36-44-21.
Urban redevelopment.
Interest in redevelopment project.
Acquisition by public official or employee or employee of redevelopment agency, §36-61-19.
Zoning, §§36-67A-1 to 36-67A-6.
Definitions, §36-67A-1.
Disclosure of campaign contributions, §36-67A-3.
Disclosure of financial interests, §36-67A-2.
Rezoning action.
Defined, §36-67A-1.
Special master.
Appointment for hearing where governing authority unable to attain quorum, §36-67A-5.
Violations of provisions, §36-67A-4.
Voting.
When not prohibited, §36-67A-6.

CONFLICTS OF LAW.
Crime information center.
Controlling effect of provisions, §35-3-40.
Development authorities.
Controlling effect of provisions, §36-62-11.

CONFLICTS OF LAW —Cont'd
Development impact fees.
Existing municipal and county laws to be brought into conformance with provisions, §36-71-12.
Downtown development authorities.
Effect of provisions on other public authorities, §36-42-14.
Interest.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds.
Repeal of conflicting provisions, §36-82-123.
Local government.
Budgets and audits.
Effect of provisions on other laws, §§36-81-9, 36-81-10.
Interest rate management agreements.
Applicability of prior contracts, §36-82-256.
Municipal home rule.
Controlling effect of provisions, §36-35-8.
Resource recovery development authorities.
Applicability of certain other provisions to proceedings, §36-63-11.

CONSERVATION AND NATURAL RESOURCES.
Municipal corporations.
Nonprofit resource conservation and development councils.
Selling or granting real or personal property to, §36-37-6.
Nonprofit resource conservation and development councils.
Municipal corporations.
Selling or granting real or personal property to, §36-37-6.
Planning.
Coordinated and comprehensive planning by counties and municipalities, §§36-70-1 to 36-70-5.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.

CONSERVATION RANGERS.
Police academy.
General provisions, §§35-4-1 to 35-4-9.

CONSERVATION RANGERS —Cont'd
Public safety training center, §§35-5-1 to 35-5-7.

CONSOLIDATION.
Counties.
Municipalities and counties.
Separate approval by referendum, §36-60-16.
Municipalities.
Counties and municipal corporations.
Separate approval by referendum, §36-60-16.

CONSTITUTION OF GEORGIA.
State debt.
Purposes for which debt incurred.
Local government employees group health plan debt prohibited, §36-21-10.

CONSTRUCTIVE NOTICE.
Urban redevelopment areas.
Disposal of property in, §36-61-10.

CONSUMER CHOICE FOR TELEVISION ACT.
General provisions, §§36-76-1 to 36-76-11.
Short title, §36-76-1.

CONTRABAND.
Bureau of investigation.
Power of agents to seize, §35-3-8.

CONTRACTS.
Annexation.
Utility service agreements.
Effect of annexation, §36-36-8.
Cable television franchise agreements, §36-90-5.
Contracts for public works.
Counties.
General provisions, §§36-10-1 to 36-10-2.2.
Local government bidding and contracting, §§36-91-1 to 36-91-95.
Counties.
Multiyear lease, purchase or lease purchase contracts, §36-60-13.
Acceptance of property subject to contract for lease purchase or installment purchase, §36-60-15.
One-year or less, contracts.
Authority to enter into, exception, §36-60-14.
Public works.
General provisions, §§36-10-1 to 36-10-2.2.

CONTRACTS —Cont'd
Counties —Cont'd
Public works —Cont'd
Local government bidding and contracting generally, §§36-91-1 to 36-91-95.
Toll roads and toll bridges.
Construction and operation of private toll roads and bridges, §36-60-21.
Utility services.
Terms and conditions, §36-1-26.
Water storage facility projects, §§36-91-100 to 36-91-102.
Industrial waste water treatment services.
Contracts by local governments to provide, §36-60-2.
Interlocal risk management agencies.
Agency and administrator, §36-85-10.
Junked motor vehicle removal.
Local governments, §36-60-4.
Local government generally.
Interest rate management agreements, §§36-82-250 to 36-82-256.
Public utility services.
Conditions and limitations, §36-80-17.
Municipal corporations.
Public utilities, §36-30-3.
Succeeding councils.
Effect of certain contracts on, §36-30-3.
Toll roads and toll bridges.
Construction and operation of private toll roads and bridges, §36-60-21.
Use, operation or management of property.
Charter not providing authorization, §36-37-6.
Water storage facility projects, §§36-91-100 to 36-91-102.
Public safety and judicial facilities authorities.
Power to enter into, §36-75-7.
Public works.
Counties.
General provisions, §§36-10-1 to 36-10-2.2.
Local government bidding and contracting generally, §§36-91-1 to 36-91-95.
Local government bidding and contracting, §§36-91-1 to 36-91-95.

CONTRACTS —Cont'd
Redevelopment.
Conflicts of interest.
Voidable contracts and transactions, §36-44-21.
Exercise of redevelopment powers.
Contracting authority of political subdivision, §36-44-19.
Solid waste.
Private solid waste collection firms.
Governmental action or displacement.
Firm's agreement with private entity or person not to be invalidated by, §36-80-22.
State patrol.
Uniforms and equipment.
Purchasing, §35-2-50.
Toll roads and toll bridges.
Construction and operation of private toll roads and bridges, §36-60-21.
Water supply.
Local authorities and local governing authorities.
Water storage facility projects, §§36-91-100 to 36-91-102.

CONVALESCENT HOMES.
Employees' records checks.
Exchange of national criminal history background information, §35-3-34.2.

CONVEYANCES.
State patrol.
Conveyances to, §§35-2-41, 35-2-41.1.

CORONERS.
Deputy coroners.
Training course, §35-4-8.
Police academy.
Training program for coroners and deputy coroners, §35-4-8.

CORPORALS.
Uniform division of department of public safety.
Promotions of personnel, §35-2-45.
Rank of battalion personnel, §35-2-36.

CORPSES.
Unidentified human corpses.
Duty of crime information center to identify, §§35-3-33, 35-3-36.

CORPUS.
Cemetery or burial lots in trust.
Conveyance to municipal corporation, §36-37-4.

CORRECTIONS.
Public safety and judicial facilities authorities, §§36-75-1 to 36-75-13.

CORRUPTION.
Municipal corporation council members and other officers.
Personal liability for official acts done corruptly, §36-33-4.

COSTS.
Bond issues.
Local government and political subdivisions.
Validation of bonds.
Proceedings, §§36-82-26, 36-82-47.
Revenue bonds, §36-82-80.
County law libraries.
Additional costs in court cases, §36-15-9.
Redevelopment.
Loans for financing redevelopment costs, §§36-44-13, 36-44-16.
Payment of redevelopment costs, §36-44-13.

COUNCILS.
Crime information center council, §§35-3-30, 35-3-32, 35-3-34, 35-3-35.
Municipal court judges, §36-32-40.

COUNTIES.
Accountants.
Examination of books.
Employment of accountant for, §36-1-10.
Actions.
Body to sue and be sued, §36-1-3.
Liability to be sued, §36-1-4.
Alarms.
Installation, service, sale, etc., §36-60-12.
Aliens.
Immigration sanctuary policies prohibited, §36-80-23.
Appropriations.
Building, electrical and other codes, §36-13-9.
Charitable grants or contributions.
Counties having population of 400,000 or more, §36-1-19.1.
Astrology.
Powers of county governing authority as to, §36-1-15.
Audits and auditors.
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.

COUNTIES —Cont'd
Authorities.
County and municipal development authorities.
General provisions, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Resource recovery development authorities, §§36-63-1 to 36-63-11.
Backdated licenses, permits, or authorizing documents.
Issuance by county officers or employees prohibited, §36-60-26.
Bankruptcy.
Not authorized to seek relief from payment of debts, §36-80-5.
Boards of commissioners.
Governing authorities generally, §§36-5-20 to 36-5-29.
Bond issues.
Commercial paper notes.
Governmental entity authorized to issue bonds, notes or certificates.
Definitions, authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
Interest.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Private activity bonds.
Allocation system, §§36-82-180 to 36-82-202.
Repayment obligations.
Local government and political subdivisions, §§36-82-140 to 36-82-142.
Revenue bonds.
Local government and political subdivisions.
General provisions, §§36-82-60 to 36-82-85, 36-82-100.
Tax proceeds.
Investment of certain proceeds in authorized bonds, §36-1-8.
Validation.
Local governments and political subdivisions.
General provisions, §§36-82-20 to 36-82-47.

COUNTIES —Cont'd
Boundaries.
Change of boundaries, §§36-3-1 to 36-3-5.
Approval.
Proceedings upon, §36-3-2.
Costs of proceedings.
Payment, §36-3-4.
Establishment of new boundary line.
When deemed established, §36-3-3.
Grand jury.
Proceedings before grand jury, §36-3-2.
Notice of approval, §36-3-2.
Notice of intention to apply for, §36-3-1.
Payment of costs of proceedings, §36-3-4.
Petition, §36-3-1.
Secretary of state.
Documents to be filed with, §36-3-5.
Survey and plat.
Copy.
Recordation by clerks of superior court, §36-3-5.
Filing with secretary of state, §36-3-5.
When new boundary line deemed established, §36-3-3.
Mutual agreement evidenced by concurrent unanimous resolution, §36-3-21.1.
Settlement of boundary disputes, §§36-3-20 to 36-3-27.
Compensation of land surveyor, §§36-3-26, 36-3-27.
Copy of survey and plat.
Furnished to county authorities, §36-3-22.
Grand jury.
Presentment of dispute by, §36-3-20.
Notice of protest or exceptions.
Hearing on, §36-3-24.
Notice of survey.
Service upon county authorities, §36-3-21.
Recordation of survey and plat, §36-3-25.
Subsequent changes in boundary line, §36-3-25.
Survey and plat.
Appointment of surveyor, §36-3-20.

COUNTIES —Cont'd
Boundaries —Cont'd
Settlement of boundary disputes —Cont'd
Survey and plat —Cont'd
Compensation of land surveyor, §§36-3-26, 36-3-27.
Copy to be furnished to county authorities, §36-3-22.
Filing with secretary of state, §36-3-23.
Notice of survey.
Service upon county authorities, §36-3-21.
Protest or exceptions, §§36-3-23, 36-3-24.
Recordation, §36-3-25.
Return to secretary of state, §36-3-20.
Streams.
Jurisdiction of counties divided by water, §36-1-2.
Survey and plat.
Change of boundaries.
Copy.
Recordation by clerks of superior courts, §36-3-5.
Filing of survey and plat with secretary of state, §36-3-5.
Settlement of boundary disputes, §§36-3-20 to 36-3-27.
Bridges, §§36-14-1 to 36-14-3.
Budgets.
Electronic transmission of budgets, §36-80-21.
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.
Building, electrical and other codes, §§36-13-1 to 36-13-12.
Adoption, §36-13-1.
Hearing, §36-13-8.
Notice, §36-13-8.
Reference to national or regional codes, §36-13-3.
Amendment, §36-13-1.
Appropriations, §36-13-9.
Arrest.
Citations for violation.
Failure to appear in response to.
Warrant for arrest, §36-13-5.1.
Building permits.
Backdated permits.
Issuance prohibited, §36-60-26.
Compliance with rules, regulations and requirements as prerequisite, §36-13-11.

COUNTIES —Cont'd
Building, electrical and other codes —Cont'd
Building permits —Cont'd
Issuance.
Contracts with other political subdivisions to issue, §36-13-4.
Rules and regulations, §36-13-6.
Citations for violation, §36-13-5.1.
Enforcement.
Contracts with other political subdivisions for, §36-13-4.
Injunctions.
Violations, §36-13-10.
Inspectors.
Appointment, §36-13-5.
Assistants.
Appointment, §36-13-5.
Jurisdiction.
Violations, §36-13-5.1.
Mandamus.
Violations of provisions, §36-13-10.
National or regional codes.
Adoption by reference to, §36-13-3.
Notice.
Adoption.
Hearing, §36-13-8.
Repeal, §36-13-1.
Rules and regulations.
Compliance.
Prerequisite to issuance of permit, §36-13-11.
Permits and inspections, §36-13-6.
Violations.
Injunctive, mandamus or other actions or proceedings, §36-13-10.
Misdemeanors, §36-13-12.
Scope.
Areas to which codes may be made applicable, §36-13-7.
Matters which may be covered, §36-13-2.
Subject matter, §36-13-2.
Territorial application.
Areas to which codes may be made applicable, §36-13-7.
Violations, §36-13-12.
Building permits.
Backdated permits.
Issuance prohibited, §36-60-26.
Compliance with rules, regulations and requirements as prerequisite, §36-13-11.
COUNTIES —Cont'd
Building permits —Cont'd
Contracts with other political subdivisions to issue, §36-13-4.
Rules and regulations, §36-13-6.
Buildings.
Destruction or damaging of county building or its appurtenances or furniture, §36-9-11.
Burglar alarms.
Installation, service, sale, etc., §36-60-12.
Burial.
Indigent persons.
Interment of deceased indigents, §36-12-5.
Business license, occupational tax certificate, other document required to operate business.
Evidence of state licensure before issuance, §36-60-6.
Federal work authorization programs.
Evidence of authorization to use upon renewal, §36-60-6.
Cable television.
Competition among providers, §§36-90-1 to 36-90-8.
Consumer choice for television act, §§36-76-1 to 36-76-11.
Regulation generally, §§36-18-1 to 36-18-5.
Cemeteries.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Charities.
Appropriations for charitable grants or contributions.
Counties having population of 400,000 or more, §36-1-19.1.
Citations.
Building, electrical and other codes.
Violations, §36-13-5.1.
Ordinance or code violations in counties of population of 550,000 or more, §36-1-17.
Civil service system for county employees, §36-1-21.
Claims against counties, §§36-11-1 to 36-11-7.
Motor vehicle claims.
Waiver of immunity.
Claims against local government entities generally, §§36-92-1 to 36-92-5.
Clerks of governing authorities.
Training classes, §36-1-24.

COUNTIES —Cont'd
Codification of ordinances and resolutions.
General codification, §36-80-19.
Commercial paper notes.
Authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
Computers.
Failure or malfunction of computer software.
Immunity from liability for losses, §36-60-20.
Conflicts of interest.
Purchases from interested county governing authority or county officer, §36-1-14.
Speculation in county orders by county officer, §36-1-13.
Zoning, §§36-67A-1 to 36-67A-6.
Consolidation of counties and municipalities.
Separate approval by referendum, §36-60-16.
Contracts.
Local government bidding and contracting generally, §§36-91-1 to 36-91-95.
Multiyear lease, purchase or lease purchase contracts, §36-60-13.
Acceptance of property subject to contract for lease purchase or installment purchase, §36-60-15.
One-year or less.
Authority to enter into, exception, §36-60-14.
Public works contracts generally, §§36-10-1 to 36-10-2.2.
Toll roads and toll bridges.
Construction and operation of private toll roads and bridges, §36-60-21.
Utility services.
Terms and conditions, §36-1-26.
Water storage facility projects, §§36-91-100 to 36-91-102.
County manager, §36-5-22.
County sites.
Change or removal, §§36-4-1 to 36-4-6.
County surveyors, §§36-7-1 to 36-7-16.
County treasurers.
General provisions, §§36-6-1 to 36-6-28.
Courthouses.
Demolition of certain county courthouses, §36-9-2.1.

COUNTIES —Cont'd
Courthouses —Cont'd
Erection and repair, §36-9-5.
Normal working hours, §36-1-12.
Officers.
Rooms in courthouse to be used by officers.
Designation, §36-9-6.
Security plans.
Development and implementation.
Budget approval, subject to, §36-81-11.
Duty of sheriff, approval, submission.
Budget, approval by governing authority, §36-81-11.
Supplies for county offices, §36-9-7.
Debt incurred by counties.
Not authorized to seek relief from payment of debts, §36-80-5.
Definitions.
Cable television systems, §36-18-1.
County documents, §36-9-5.
County leadership training, §36-20-3.
Deposits.
Bank or trust company account identified as for county, §36-1-9.
Development.
Development authorities.
County and municipal development authorities, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Impact fees.
General provisions, §§36-71-1 to 36-71-13.
Redevelopment powers generally, §§36-44-1 to 36-44-23.
Transfer of development rights, §36-66A-2.
Definitions, §36-66A-1.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Dispatch centers, §36-60-19.
Documents.
Defined, §36-9-5.
Storage, §36-9-5.
Electrical codes.
Building, electrical and other codes, §§36-13-1 to 36-13-12.
Electronic security systems.
Installation, service, etc., §36-60-12.
Emergencies.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.

COUNTIES —Cont'd
Eminent domain.
Urban redevelopment.
Requirements to exercise power, §36-61-3.1.
Employees.
Civil service system, §36-1-21.
Employment benefits.
Expenditures for, §36-1-11.1.
Insurance.
Administrative expenses, §§36-21-3, 36-21-5.
Audits, §36-21-4.
Board of directors, §36-21-3.
Definitions, §36-21-2.
Establishment of benefit plans, §36-21-5.
Expenditures for, §36-1-11.1.
Funds.
Contributions by county or employee, §36-21-5.
Insurance statutes of title 33 inapplicable, §36-21-8.
Investment of funds, §36-21-6.
Protection from process, levy, attachment or assignment, §36-21-7.
Group health benefits program, §§36-21-1 to 36-21-10.
Purpose, §36-21-1.
State debt not to be created, §36-21-10.
Tax exempt status of program, §36-21-9.
Temporary personnel.
Employment for assistance of county officers or department, §36-1-11.
Federal programs.
Authority to participate in, §§36-87-1, 36-87-2.
Fees.
County treasurers, §§36-6-12, 36-6-13.
Payment of certain fees in county treasury, §36-1-9.
Fire alarms.
Installation, service, sale, etc., §36-60-12.
Fireworks.
Prohibition of sale or services, restrictions, §36-60-24.
Fortunetelling.
Powers of county governing authority as to, §36-1-15.
Garbage and trash.
Transporting across county or state boundaries for dumping.
Permission required, §36-1-16.

COUNTIES —Cont'd
Gas codes.
Building, electrical and other codes, §§36-13-1 to 36-13-12.
Governing authorities, §§36-5-20 to 36-5-29.
Bridges.
Powers as to, §§36-14-1 to 36-14-3.
Certified county commissioners.
Compensation supplement, §36-5-27.
Clerks.
Training classes, §36-1-24.
Compensation, §§36-5-24 to 36-5-29.
Four-year terms of office.
Percentage increase, §36-5-29.
Increase for certain members, §36-5-29.
Increase tied to classified service employees increase, §36-5-28.
Percentage increase, §36-5-29.
Six-year terms of office.
Percentage increase, §36-5-29.
Two-year terms of office.
Percentage increase, §36-5-29.
County leadership training.
Definition of county governing authority, §36-20-3.
General provisions, §§36-20-1 to 36-20-9.
Training of persons elected as members, §36-20-4.
County manager, §36-5-22.
County treasurers.
Books.
Deposit with governing authority when full, §36-6-19.
Duties, §36-5-22.1.
Meetings.
Official minutes, §36-1-25.
Minutes.
Official minutes of meetings, §36-1-25.
Names.
Official names, §36-5-20.
Powers, §36-5-22.1.
Cable television systems, §36-18-2.
Real property.
Control and disposal of property, §36-9-2.
Service of process.
Authorizing service by officers, agents and employees, §36-5-26.
Single commissioner.
Compensation, §36-5-25.

COUNTIES —Cont'd
Governing authorities —Cont'd
Summons and process.
Authorizing service of process by officers, agents and employees, §36-5-26.
Supplies for county offices.
Duty to furnish, §36-9-7.
Vacancies in office, §36-5-21.
Grand jury.
Boundaries.
Change of boundaries.
Proceedings before grand jury, §36-3-2.
Settlement of boundary disputes.
Presentment of dispute by grand jury, §36-3-20.
Receipts and disbursements.
Submission of sworn returns to grand jury by certain county officers, §36-1-7.
Grants of state funds.
Public purposes based upon road mileage, §§36-17-1 to 36-17-3.
Amount.
Computation of individual county grants, §36-17-2.
Computation of individual county grants, §36-17-2.
Disbursement of funds, §36-17-3.
Expenditure of funds, §36-17-3.
Legislative declaration, §36-17-1.
Purpose of provisions, §36-17-1.
Roads and maintenance, §§36-17-20 to 36-17-25.
Allocation of funds, §§36-17-21, 36-17-22.
Authorization of grants, §36-17-20.
Constitutional authority for grants, §36-17-20.
Rules and regulations, §36-17-25.
State revenue commissioner.
Powers and duties, §36-17-25.
Surplus funds.
Tax bills.
Surplus to be shown on, §36-17-24.
Use, §36-17-21.
Tax credits.
Claims by taxpayer, §36-17-23.
False claiming, §36-17-23.
Grant of certain tax credits as prerequisite to receipt of funds, §§36-17-21, 36-17-22.
Limits on granting, §36-17-23.
COUNTIES —Cont'd
Grants of state funds —Cont'd
Roads and maintenance —Cont'd
Tax credits —Cont'd
Tax bills.
Credits to be shown on, §36-17-24.
Health insurance.
Group health benefits program for officers and employees, §§36-21-1 to 36-21-10.
Highways, roads and streets.
Reopening or repairing of roads necessitated by private construction activity.
Assessments for costs.
Authority of counties having population of 550,000 or more, §36-1-18.
Historical containers.
General provisions, §§36-16-1 to 36-16-5.
Housing codes.
Generally, §§36-13-1 to 36-13-12.
Immigration sanctuary policies prohibited, §36-80-23.
Immunity.
Computer malfunction or failure, §36-60-20.
Liability to be sued, §36-1-4.
Motor vehicle claims.
Waiver of immunity.
Claims against local government entities generally, §§36-92-1 to 36-92-5.
Indigent persons, §§36-12-1 to 36-12-5.
Deceased indigents.
Interment, §36-12-5.
Eligibility for benefits, §36-12-2.
Liability of person sending pauper to county for support purposes, §36-12-4.
Relatives.
Duty to support paupers, §36-12-3.
Recovery by county for provisions furnished, §36-12-3.
Supervision of paupers.
Governing authority, §36-12-1.
Indorsements.
Negotiability of county orders, §36-11-6.
Injunctions.
Building, electrical and other codes.
Violations, §36-13-10.
Insurance.
Books of laws and court reports.
Fire insurance, §36-9-4.

COUNTIES —Cont'd
Insurance —Cont'd
Group health benefits program for officers and employees, §§36-21-1 to 36-21-10.
Administrative expenses, §§36-21-3, 36-21-5.
Audits, §36-21-4.
Board of directors, §36-21-3.
Definitions, §36-21-2.
Establishment of benefit plans, §36-21-5.
Expenditures to provide insurance for, §36-1-11.1.
Funds.
Contributions by county or employee, §36-21-5.
Insurance statutes of title 33 inapplicable, §36-21-8.
Investment of funds, §36-21-6.
Protection from process, levy, attachment or assignment, §36-21-7.
Purpose, §36-21-1.
State debt not to be created, §36-21-10.
Tax exempt status of program, §36-21-9.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Interest.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Interlocal cooperation act.
General provisions, §§36-69A-1 to 36-69A-9.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Investments.
Bond issues.
Tax proceeds.
Investment of certain proceeds in authorized bonds, §36-1-8.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Jails.
Construction of county jails, §36-9-9.
Erection and repair of county jail, §36-9-5.

COUNTIES —Cont'd
Judgments.
Satisfaction of judgment against county, §36-11-7.
Jurisdiction.
Building, electrical and other codes.
Violations, §36-13-5.1.
Unincorporated areas of counties.
Ordinances for governing and policing.
Violations, §36-1-20.
Law libraries.
General provisions, §§36-15-1 to 36-15-12.
Leadership training.
General provisions, §§36-20-1 to 36-20-9.
Leases.
Multiyear lease, purchase, or lease purchase contracts, §36-60-13.
Acceptance of property subject to contract for lease purchase or installment purchase, §36-60-15.
Libraries.
County law libraries, §§36-15-1 to 36-15-12.
Local government code enforcement boards.
Generally, §§36-74-1 to 36-74-50.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Local government registration act, §36-80-16.
Mandamus.
Building, electrical and other codes.
Violations, §36-13-10.
Merger of municipal government with county, §§36-68-1 to 36-68-4.
Constitutional authority for provisions, §36-68-1.
County containing no municipality.
Conditions under which deemed a consolidated government, §36-68-4.
Enabling local law.
Mandatory features, §36-68-3.
Optional features, §36-68-2.
Purpose of provisions, §36-68-1.
Militia districts, §§36-2-1 to 36-2-4.
Addition, consolidation or abolition, §§36-2-3, 36-2-4.
Division of county into, §36-2-1.
Minimum requirements, §36-2-2.
Minutes of meetings.
Governing body.
Official minutes, §36-1-25.

COUNTIES —Cont'd
Motor vehicles.
Claims against local government entities.
Waiver of immunity, §§36-92-1 to 36-92-5.
Decal or seal on vehicles owned or leased by local government, §36-80-20.
Names, §36-1-1.
Governing authorities.
Official name, §36-5-20.
Notice.
Boundaries.
Change of boundaries.
Notice of approval, §36-3-2.
Notice of intention to apply for, §36-3-1.
Settlement of boundary disputes.
Notice of survey.
Service upon county authorities, §36-3-21.
Process or exceptions.
Notice of hearing, §36-3-24.
Building, electrical and other codes.
Adoption.
Hearing, §36-13-8.
Change or removal of county site.
Election, §36-4-1.
Real property.
Sale or disposition, §36-9-3.
Number of counties, §36-1-1.
Officers.
Backdated licenses, permits, or other authorizing documents.
Issuance prohibited, §36-60-26.
Change or removal from county site.
Where offices to be kept after removal, §36-4-6.
Courthouses.
Rooms in courthouse to be used by officers.
Designation, §36-9-6.
Employment benefits.
Expenditures for, §36-1-11.1.
Insurance.
Administrative expenses, §§36-21-3, 36-21-5.
Audits, §36-21-4.
Board of directors, §36-21-3.
Definitions, §36-21-2.
Establishment of benefit plans, §36-21-5.
Expenditures for employment benefits, §36-1-11.1.

COUNTIES —Cont'd
Officers —Cont'd
Insurance —Cont'd
Funds.
Contributions by county or employee, §36-21-5.
Insurance statutes of title 33 inapplicable, §36-21-8.
Investment of funds, §36-21-6.
Protection from process, levy, attachment or assignment, §36-21-7.
Group health benefits program, §§36-21-1 to 36-21-10.
Purpose, §36-21-1.
State debt not to be created, §36-21-10.
Tax exempt status of program, §36-21-9.
Purchases from interested county officers prohibited, §36-1-14.
Speculation in county orders.
Misdemeanor, §36-1-13.
Surveyors, §§36-7-1 to 36-7-16.
Temporary personnel.
Employment for assistance of county officers, §36-1-11.
Treasurers, §§36-6-1 to 36-6-28.
Ordinances.
Citations for violations.
Counties of population of 550,000 or more, §36-1-17.
Code of ordinances and resolutions.
Adoption of general codification by ordinance, §36-80-19.
Copies, furnishing, §36-80-19.
County law library.
Copy furnished to, §36-80-19.
Funds used to establish and maintain code, §36-15-7.
Additional costs collected in civil and criminal proceedings, §36-15-9.
General codification, §36-80-19.
Internet, availability on, §36-80-19.
Official citation of code, §36-80-19.
Unincorporated areas of counties.
Ordinance for governing and policing, §36-1-20.
Palmistry.
Powers of county governing authority as to, §36-1-15.
Parks and recreation.
County and municipal recreation systems.
General provisions, §§36-64-1 to 36-64-15.

COUNTIES —Cont'd
Pensions.
Expenditures for employment benefits, §36-1-11.1.
Petitions.
Boundaries.
Change of boundary, §36-3-1.
Change or removal of county site, §36-4-1.
Planning.
Coordinated and comprehensive planning by counties and municipalities.
General provisions, §§36-70-1 to 36-70-5.
Plumbing codes.
Building, electrical and other codes, §§36-13-1 to 36-13-12.
Police.
Employment and training of peace officers.
General provisions, §§35-8-1 to 35-8-26.
General provisions, §§36-8-1 to 36-8-7.
Georgia peace officer standards and training act.
General provisions, §§35-8-1 to 35-8-26.
Police academy.
General provisions, §§35-4-1 to 35-4-9.
Powers.
Redevelopment.
General provisions, §§36-44-1 to 36-44-23.
Private activity bonds.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.
Publication.
Boundaries.
Change of boundaries.
Notice of approval, §36-3-2.
Notice of intention to apply for, §36-3-1.
Financial statements.
Annual financial statement, §36-1-6.
Militia districts.
Addition, consolidation or abolition, §36-2-4.
Public safety and judicial facilities authorities, §§36-75-1 to 36-75-13.
Public utilities.
Contracts.
Terms and conditions, §36-1-26.

COUNTIES —Cont'd
Public works contracts.
Counties with population of 550,000 or more.
Letting of contracts, §36-10-2.1.
Governing authority.
Entry of contracts on minutes, §36-10-1.
Letting of contracts, §§36-10-2.1, 36-10-2.2.
Letting of contracts.
Certain counties with population of more than 150,000, §36-10-2.2.
Counties with population of 550,000 or more, §36-10-2.1.
Local government bidding and contracting generally, §§36-91-1 to 36-91-95.
Regional facilities, §§36-73-1 to 36-73-4.
Written contracts required, §36-10-1.
Purchases.
Interested county governing authority or county officer.
Purchase with county funds from, §36-1-14.
Real property.
Conveyances for use of county.
Vesting in county of title, §36-9-1.
Destruction or damaging of county building or its appurtenances or furniture.
Misdemeanor, §36-9-11.
Disposal.
Power of governing authority, §36-9-2.
Procedure, §36-9-3.
Governing authority.
Control and disposal of property, §36-9-2.
Multiyear lease, purchase or lease purchase contracts, §36-60-13.
Acceptance of property subject to contract for lease purchase or installment purchase, §36-60-15.
Obtaining real property within adjoining county which will be exchanged for federal property, §36-60-18.
Development authorities, §36-62-6.1.
Sale, §36-9-3.
Sheriff.
Protection of county property, §36-9-8.
Title.
Conveyances for use of county.
Vesting in county of title, §36-9-1.

COUNTIES —Cont'd
Recreation system.
County and municipal recreation system, §§36-64-1 to 36-64-15.
Recycling.
Collection and disposal of solid waste and recyclables.
Standards and procedures.
Authority of local government to adopt laws, rules or regulations establishing, §36-80-22.
Redevelopment.
Powers generally, §§36-44-1 to 36-44-23.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Referendum.
Consolidation of cities and counties.
Separate approval by referendum, §36-60-16.
Regional facilities.
Contracts for, §§36-73-1 to 36-73-4.
Relief from payment of debts.
Counties not authorized to seek, §36-80-5.
Reservoirs.
Water storage facility projects.
Local authorities and local governing authorities, §§36-91-100 to 36-91-102.
Resource recovery authorities.
General provisions, §§36-63-1 to 36-63-11.
Retirement.
Expenditures for employment benefits, §36-1-11.1.
Revenue bonds.
Local government and political subdivisions.
General provisions, §§36-82-60 to 36-82-85, 36-82-100.
Rules and regulations.
Grants of state funds.
Roads and maintenance, §36-17-25.
Salaries.
Governing authorities, §§36-5-24 to 36-5-29.
Certified county commissioners.
Supplement to compensation, §36-5-27.
County commissioner in county administered by single commissioner, §36-5-25.

COUNTIES —Cont'd
Salaries —Cont'd
Governing authorities —Cont'd
Increase tied to classified service employees increase, §36-5-28.
Security systems.
Installation, service, sale, etc., §36-60-12.
Service delivery, §§36-70-20 to 36-70-28.
Service of process.
Service upon county, §36-1-5.
Services in portion of city within county.
Annual meeting and agreement between county and city representatives, §36-60-10.
Sites.
Change or removal, §§36-4-1 to 36-4-6.
Slums.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Social security.
Expenditures for employment benefits, §36-1-11.1.
Solid waste.
Collection and disposal of solid waste and recyclables.
Standards and procedures.
Authority of local government to adopt laws, rules or regulations establishing, §36-80-22.
Transporting waste across state or county boundaries for dumping.
Permission required, §36-1-16.
Sovereign immunity.
Motor vehicle claims.
Waiver of immunity.
Claims against local government entities generally, §§36-92-1 to 36-92-5.
Status.
Bodies corporate, §36-1-3.
Surveys and surveyors.
County surveyors.
General provisions, §§36-7-1 to 36-7-16.
Taxation.
Fortunetelling and kindred practices, §36-1-15.
Investment of certain tax proceeds in authorized bonds, §36-1-8.

COUNTIES —Cont'd
Taxation —Cont'd
Parks and recreation.
County and municipal recreation systems, §§36-64-8 to 36-64-10, 36-64-15.
Television.
Cable television.
County regulation generally, §§36-18-1 to 36-18-5.
Training.
County leadership training.
General provisions, §§36-20-1 to 36-20-9.
Treasurers.
General provisions, §§36-6-1 to 36-6-28.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Water supply.
Purchase of materials used in construction of water systems.
Purchase from county not to be required, §36-1-23.
Water storage facility projects.
Local authorities and local governing authorities, §§36-91-100 to 36-91-102.
Water treatment systems.
Operated and maintained by private entities, §36-60-15.1.
Zoning.
Conflicts of interest, §§36-67A-1 to 36-67A-6.
Procedures generally, §§36-66-1 to 36-66-6.

COUNTY BONDS.
Interest.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Private activity bonds.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.
Repayment obligations.
Local government and political subdivisions, §§36-82-140 to 36-82-142.
Revenue bonds.
Local government and political subdivisions, §§36-82-60 to 36-82-85, 36-82-100.

COUNTY BONDS —Cont'd
Validation.
Local government and political subdivisions.
General provisions, §§36-82-20 to 36-82-47.

COUNTY BRIDGES.
Adjacent states.
Bridges over rivers bordering.
Cooperation in building and maintaining, §36-14-2.
Navigable streams within state.
Authority to erect bridges across, §36-14-1.
Rivers bordering adjacent states.
Cooperation in building and maintaining bridges over, §36-14-2.
United States.
Streams bordering land ceded to.
Contracts with federal government for bridges across, §36-14-3.

COUNTY COURTHOUSES.
Demolition of certain county courthouses, §36-9-2.1.
Erection and repair, §36-9-5.
Normal working hours, §36-1-12.
Officers.
Rooms in courthouse to be used by officers.
Designation, §36-9-6.
Security plans.
Development and implementation.
Budget approval, subject to, §36-81-11.
Duty of sheriff, approval, submission.
Budget, approval by governing authority, §36-81-11.
Supplies for county offices, §36-9-7.

COUNTY COURTHOUSE SECURITY.
Development and implementation of plan.
Budget approval, subject to, §36-81-11.

COUNTY ELECTIONS.
Change or removal of county site, §§36-4-1 to 36-4-6.
County surveyors, §§36-7-2 to 36-7-3.
County treasurers, §36-6-1.
Courthouses.
Demolition of certain county courthouses.
Referendum on question, §36-9-2.1.

COUNTY ELECTIONS —Cont'd
Governing authorities.
Vacancies in office.
Special election, §36-5-21.
Special elections.
Vacancies in office, §36-5-21.
Vacancies in office.
Special elections, §36-5-21.
Voting rights act of 1965.
Submissions to United States department of justice pursuant to.
Attorney general to receive copy, §36-60-11.

COUNTY HISTORICAL CONTAINERS, §§36-16-1 to 36-16-5.
Applicability of provisions.
Prerequisites, §36-16-5.
Governing authority of county.
Furnishing of container, §36-16-1.
Grand jury.
Majority vote of two successive regular grand juries required, §36-16-5.
Judge of probate court.
Determination of admissibility of documents submitted for filing, §36-16-3.
Fee for filing of documents, §36-16-4.
Maintenance of record and index, §36-16-4.
Placing in office of judge, §36-16-1.
Receipt of historical data for preservation, §36-16-2.
Military affairs.
Deposit of documents relating to soldiers and surviving spouses, §36-16-3.
Probate courts.
Judges.
Receipt of historical data for preservation, §36-16-2.

COUNTY LAW LIBRARIES, §§36-15-1 to 36-15-12.
Board of trustees.
Duties, §36-15-4.
Expenditures.
Use of funds, §36-15-7.
Counties having population of 950,000 or more, §36-15-11.
Members, §36-15-1.
Powers, §36-15-4.
Funds, §§36-15-5 to 36-15-7.
Quorum, §36-15-1.
Secretary-treasurer, §36-15-2.
Bond, §36-15-3.

COUNTY LAW LIBRARIES —Cont'd
Bonds, surety.
Secretary-treasurer of board, §36-15-3.
City court of city having population of 300,000 or more.
Exceptions to provisions, §36-15-12.
Code of ordinances and resolutions.
Copy furnished to library, §36-80-19.
Funds used to establish and maintain code, §36-15-7.
Additional costs collected in civil and criminal proceedings, §36-15-9.
Costs.
Additional costs in court cases, §36-15-9.
Counties having population of 950,000 or more.
Receipt and disbursement of funds, §36-15-11.
Exceptions to provisions.
City court of city having population of 300,000 or more, §36-15-12.
Facilities.
Furnishing by county governing authority, §36-15-8.
Investments.
Powers of board of trustees, §§36-15-5, 36-15-6.
Librarian.
Compensation, §36-15-2.
Designation, §36-15-2.
Public utilities.
Furnishing of utilities by county governing authority, §36-15-8.
Ratification of prior actions, decisions, contracts and purchases, §36-15-10.
Saving provision.
Ratification of prior actions, decisions, contracts and purchases, §36-15-10.

COUNTY LEADERSHIP ACT.
Georgia county leadership act.
General provisions, §§36-20-1 to 36-20-9.
Short title, §36-20-1.

COUNTY LEADERSHIP TRAINING, §§36-20-1 to 36-20-9.
Academy, §36-20-5.
Board, §§36-20-6 to 36-20-8.
Department of community affairs.
Administrative assignment to department, §36-20-6.

COUNTY LEADERSHIP TRAINING —Cont'd
Academy —Cont'd
Powers and duties, §36-20-5.
Report on accomplishments of academy, §36-20-9.
Board, §36-20-6.
Composition, §36-20-7.
Gifts and grants.
Acceptance, §36-20-8.
Membership, §36-20-7.
Powers, §36-20-8.
Citation of act.
Short title, §36-20-1.
County governing authority.
Defined, §36-20-3.
Training of persons elected as members, §36-20-4.
Definitions, §36-20-3.
Findings of legislature, §36-20-2.
Legislative declaration, §36-20-2.
Reports.
Accomplishments of academy, §36-20-9.
Title of act.
Short title, §36-20-1.

COUNTY POLICE, §§36-8-1 to 36-8-7.
Abolishment of force.
Authority, §36-8-2.
Appointment, §36-8-1.
Arrest.
Power to make arrest, §36-8-5.
Authority to abolish police force, §36-8-2.
Bonds, surety, §36-8-3.
Chief of police.
Designation and qualifications, §35-1-12.
Dispatch centers.
Required training for communications officers, §36-60-19.
Election, §36-8-1.
Emergency response and vehicular pursuit policies.
Agencies to adopt, crossing jurisdictions, policies to address, failure to adopt, funding withheld, §35-1-14.
Employment and training of peace officers.
General provisions, §§35-8-1 to 35-8-26.
Georgia peace officer standards and training act.
General provisions, §§35-8-1 to 35-8-26.

COUNTY POLICE —Cont'd
High-speed police chases, §35-1-14.
Police academy.
General provisions, §§35-4-1 to 35-4-9.
Powers, §36-8-5.
Qualifications, §36-8-1.
Removal from office, §36-8-2.
Rules and regulations, §36-8-7.
Salaries, §36-8-4.
TASERS and electronic control weapons.
Use, requirements, policies, establishment, training, §35-8-26.
Taxation.
Levy to pay salaries and expenses, §36-8-4.
Terms of office, §36-8-2.

COUNTY PROPERTY TAXES.
Homeowner tax relief grants, §§36-89-1 to 36-89-6.
Allotment procedures, §36-89-4.
Appropriations, §36-89-2.
Adjustments to fund eligible assessed value, §36-89-3.
General assembly to specify amount appropriated, §36-89-3.
Conditions under which county is eligible, §36-89-4.
Definitions, §36-89-1.
Distribution of grants, §36-89-5.
Erroneous or illegal credits, §36-89-6.
Excess funds, §36-89-5.
Notice to taxpayer of reduction on tax bill, §36-89-4.
Purpose, §36-89-2.
Rules and regulations, §36-89-5.

COUNTY SITES.
Change or removal, §§36-4-1 to 36-4-6.
Courts.
Where held after removal, §36-4-5.
Election, §§36-4-1, 36-4-2.
Ballots, §36-4-3.
Certificate of secretary of state as evidence of, §36-4-4.
Notice, §36-4-1.
Number of votes required, §36-4-3.
Certificate of secretary of state as evidence of number of votes, §36-4-4.
Qualifications of voters, §36-4-1.
Returns, §36-4-2.
Offices of county officers.
Where offices to be kept after removal, §36-4-6.

COUNTY SITES —Cont'd
Change or removal —Cont'd
Petition, §36-4-1.
Validity of proceedings, §36-4-5.

COUNTY SURVEYORS, §§36-7-1 to 36-7-16.
Appointment, §36-7-2.1.
Commissioning of surveyor, §36-7-4.
Assistants.
Appointment, §36-7-1.
Entry on minutes of probate court, §36-7-6.
Oath of office, §36-7-6.
Bonds, surety, §36-7-5.
Commissioning, §§36-7-2, 36-7-4.
Conflicts of interest.
Appointment of disinterested surveyor when county surveyor interested, §36-7-14.
Counties.
Residence in counties required, §36-7-7.
Deputies.
Appointment, §36-7-1.
Duties, §36-7-8.
Election, §36-7-2.
Abolishing elected office and authorizing appointment, §36-7-2.1.
Failure of election to fill office.
Procedure on, §36-7-3.
Evidence.
Surveys or plats.
When deemed presumptive evidence of facts, §36-7-12.
Executions.
Fees, §36-7-11.
False survey, §36-7-16.
Fees, §36-7-9.
Execution for fees, §36-7-11.
Payment of fees, §36-7-10.
Forms.
Oath of office, §36-7-5.
Oath of office, §36-7-5.
Assistant, §36-7-6.
Disinterested surveyor appointed when county surveyor interested, §36-7-14.
Persons performing duties of office when no county surveyor, §36-7-13.
Office provisions, §36-7-7.
Performance of duties when no county surveyor.
Persons who may perform, §36-7-13.

COUNTY SURVEYORS —Cont'd
Place of office, §36-7-7.
Qualifications, §36-7-2.
Appointed surveyor, §36-7-2.1.
Removal from office, §§36-7-2, 36-7-15.
Want of capacity, §36-7-15.
Required for each county, §36-7-1.
Surveys.
Duties as to, §36-7-8.
False survey, §36-7-16.
Presumptive evidence of fact.
When surveys or plats deemed, §36-7-12.
Vacancies in office.
Procedure upon, §36-7-3.

COUNTY TREASURERS, §§36-6-1 to 36-6-28.
Abolition of office.
General assembly, §36-6-1.
Accounts and accounting.
Final settlement of accounts, §36-6-21.
Requirement by county authorities of accounting by treasurer, §36-6-22.
Failure to render accounting.
Proceedings upon, §36-6-23.
Annual statements, §36-6-14.
Bonds, surety.
Amount, §36-6-4.
Depositories selected by treasurer, §36-6-17.
Filing and recordation, §36-6-5.
Costs of transmitting and recording bond.
Payment, §36-6-9.
Effect of recordation, §36-6-6.
Governor to give directions relating to, §36-6-9.
Lien of bond.
Effect of provisions on lien of bond as between parties, §36-6-7.
Lien of bond, §§36-6-7, 36-6-8.
Requirement, §36-6-2.
Third parties.
Recordation of bond necessary to bind third parties without notice, §36-6-6.
Vacancies in office.
Persons appointed to fill, §36-6-26.
When bond to be given, §36-6-4.
Books.
Delivery to successor, §36-6-20.
Disposition when full, §36-6-19.
Furnishing by county, §36-6-11.
Claims against counties.
Order on treasurer for payment, §§36-11-2 to 36-11-6.

COUNTY TREASURERS —Cont'd
Collection and disbursal of funds, §36-6-15.
County orders.
Purchase at less than full value or refusal to pay order, §36-6-28.
Deposits.
Depositories.
Bonds, surety, §36-6-17.
Deposit of county funds in, §36-6-16.
Funds held for benefit of third persons or litigants by officer of county or court.
Deposit in treasury of certain counties, §36-6-16.1.
Interest on deposits, §36-6-18.
Duties, §36-6-14.
Collection and disbursal of funds, §36-6-15.
Elections, §36-6-1.
Executions.
Failure to pay over money.
Execution against treasurer, §36-6-27.
Fees, §36-6-12.
Road contracts.
Commission or fees in connection with, §36-6-13.
Forms.
Oath of office, §36-6-3.
Liens.
Bonds, surety, §§36-6-7, 36-6-8.
Location of office, §36-6-10.
Oath of office.
Filing and recordation, §36-6-5.
Form, §36-6-3.
Requirement, §36-6-2.
Office.
Location, §36-6-10.
Qualifications, §36-6-1.
Removal from office, §36-6-24.
Accounting required by county authorities.
Failure to render accounting, §36-6-23.
County orders.
Purchase at less than full value or refusal to pay order, §36-6-28.
Manner of removal, §36-6-24.
Stationery.
Furnishing by county, §36-6-11.
Successor in office.
Delivery of money, books, papers and property to, §36-6-20.
Execution against treasurer for failure to pay over, §36-6-27.
COUNTY TREASURERS —Cont'd
Term of office, §36-6-1.
Vacancies in office, §36-6-25.
Bonds of persons appointed to fill, §36-6-26.
Filling, §36-6-25.

COURIER SERVICE.
Georgia allocation system.
Issuance of notice of application, §36-82-185.

COURTHOUSES.
County courthouses.
Demolition of certain county courthouses, §36-9-2.1.
Erection and repair, §36-9-5.
Normal working hours, §36-1-12.
Officers.
Rooms in courthouse to be used by officers.
Designation, §36-9-6.
Security plans.
Development and implementation.
Duty of sheriff, approval, submission.
Budget, approval by governing authority, §36-81-11.
Supplies for county offices, §36-9-7.

COURTHOUSE SECURITY.
Development and implementation of plan.
Duty of sheriff, approval, submission.
Budget, approval by governing authority, §36-81-11.

COURTS.
County law libraries, §§36-15-1 to 36-15-12.
Criminal justice coordinating council, §§35-6A-1 to 35-6A-10.
Municipal courts.
General provisions, §§36-32-1 to 36-32-40.
War on terrorism local assistance act, §§36-75-1 to 36-75-13.

CRIME INFORMATION CENTER, §§35-3-30 to 35-3-40.
Actions.
Restricted access to records, action against entity declining to restrict, §35-3-37.
Appeals.
Denial of request to modify or correct information, §35-3-37.
Purging, modifying or supplementing of criminal records, §35-3-37.

CRIME INFORMATION CENTER —Cont'd
Child care learning centers.
Exchange of national criminal history background information, §35-3-34.2.
Child-caring institutions and child-placing institutions.
Exchange of national criminal history background information, §35-3-34.2.
Confidentiality of information.
Privacy compact, §35-3-39.1.
Restricted access to individual's criminal history record information, §35-3-37.
Unauthorized requests and disclosures of criminal history record information, §35-3-38.
Conflict of laws.
Controlling effect of provisions, §35-3-40.
Council, §35-3-32.
Defined, §35-3-30.
Duties, §35-3-32.
Rules and regulations.
Dissemination of records, §§35-3-34, 35-3-35.
Day-care centers.
Exchange of national criminal history background information, §35-3-34.2.
Definitions, §35-3-30.
Disclosure of information.
Exonerated first offender's criminal record, §35-3-34.1.
Dissemination of records, §§35-3-34, 35-3-35.
Privacy compact, §35-3-39.1.
Unauthorized requests, disclosures, etc., §35-3-38.
Division of bureau of investigation, §35-3-3.
Duties, §35-3-33.
Electronic dissemination of information, §35-3-34.
Erroneous information, request for modification, §35-3-37.
Establishment, §35-3-31.
Exonerated first offender's criminal record.
Disclosure of information, §35-3-34.1.
Family-day care homes.
Exchange of national criminal history background information, §35-3-34.2.

CRIME INFORMATION CENTER —Cont'd
Fees.
Inspection of criminal records, §§35-3-37, 35-3-37.
Felony convictions.
Restricted access to individual's criminal history record information, §35-3-37.
Fines.
Prohibited acts, §35-3-38.
Fingerprints.
Submission of identifying data to center by state criminal justice agencies, §35-3-36.
Firearms, notification to dealer of individual's prohibition on purchasing or possession.
Hospitalization records to be provided, §35-3-37.
Group day-care homes.
Exchange of national criminal history background information, §35-3-34.2.
Identifying data.
Submission to center by state criminal justice agencies, §35-3-36.
Immunity.
Employees.
Accuracy of information, §35-3-36.
Individual's inspection and review of criminal history record information, §35-3-37.
Inspections.
Criminal records, §35-3-37.
Interpretation and construction, §35-3-40.
Jail or detention center maintenance of criminal history record information.
Written request for, §35-3-37.
Law enforcement officers.
Criminal record investigation.
Fingerprinted to determine existence of criminal record.
Requirements for employment or certification, §35-8-8.
Misdemeanors.
Restricted access to individual's criminal history record information, §35-3-37.
Motor vehicles.
Stolen motor vehicles and license plates.
Reporting requirements.
Effect, §35-1-4.

CRIME INFORMATION CENTER —Cont'd
Nonfeasance in office.
Neglect or refusal of official to act as required by provisions, §35-3-39.
Notice.
Appeal of denial of request to modify or correct information, §35-3-37.
Purging, modifying or supplementing of criminal records.
Appeals, §35-3-37.
Restricted access to individual's criminal history record information, §35-3-37.
Nuclear facilities requesting criminal history information.
High priority placed on requests, §35-3-30.
Nursing homes employee records checks.
Exchange of national criminal history background information, §35-3-34.2.
Photographs.
Submission of identifying data to center by state criminal justice agencies, §35-3-36.
Powers, §35-3-33.
Dissemination of records, §§35-3-34, 35-3-35.
Privacy compact, §35-3-39.1.
Prosecuting attorneys.
Restricted access to records, action against attorney declining to restrict, §35-3-37.
Purging, modifying or supplementing of criminal records, §35-3-37.
Records checks.
Child care learning centers.
Exchange of national criminal history background information, §35-3-34.2.
Child-caring institutions and child-placing institutions.
Exchange of national criminal history background information, §35-3-34.2.
Day-care centers.
Exchange of national criminal history background information, §35-3-34.2.
Family-day care homes.
Exchange of national criminal history background information, §35-3-34.2.

CRIME INFORMATION CENTER —Cont'd
Records checks —Cont'd
Firearms transfers and purchases.
National instant criminal background check system, §35-3-34.
Group day-care homes.
Exchange of national criminal history background information, §35-3-34.2.
Law enforcement officers.
Requirements for employment or certification, §35-8-8.
Nuclear facilities requesting criminal history information.
High priority placed on requests, §35-3-30.
Nursing homes employee records checks.
Exchange of national criminal history background information, §35-3-34.2.
Privacy compact, §35-3-39.1.
Unauthorized requests and disclosures, §35-3-38.
Request for information, §35-3-34.
Exonerated first offender's criminal record, §35-3-34.1.
Restricted access to individual's criminal history record information, §35-3-37.
Review of criminal history record information by individuals, §35-3-37.
Rules and regulations.
Dissemination of records, §§35-3-34, 35-3-35.
State personnel administration.
Status of personnel, §35-3-31.
State personnel board.
Status of personnel, §35-3-31.
Weapons.
Firearms transfers and purchases.
National instant criminal background check system, §35-3-34.

CRIME LAB.
Division of forensic sciences, §§35-3-150 to 35-3-155.

CRIME PREVENTION AND PRIVACY COMPACT.
Criminal history information, §35-3-39.1.

CRIMES AND OFFENSES.
Offenses against public health and morals.
Obscenity and related offenses.
Electronically furnishing obscene material to minors, §35-3-4.1.
Offenses related to minors generally, §35-3-4.1.

CRIMINAL BACKGROUND CHECKS.
Criminal information center.
General provisions, §§35-3-30 to 35-3-40.
Firearms.
Transfers and purchases.
National instant criminal background check system, §35-3-34.
Fire departments.
Information from crime information center, §35-3-33.
National instant criminal background check system.
Firearms transfers and purchases subject to, §35-3-34.
Weapons.
Firearms transfers and purchases.
National instant criminal background check system, §35-3-34.

CRIMINAL JUSTICE COORDINATING COUNCIL, §§35-6A-1 to 35-6A-10.
Appropriations, §35-6A-9.
Budget requests.
Preparation, §35-6A-9.
Bureau of investigation.
Assigned to, §35-6A-2.
Compensation and expense allowance of members, §35-6A-5.
Creation, §35-6A-2.
Crime victim's compensation board.
Council serving as board, §35-6A-4.
Director.
Appointment, §35-6A-6.
Powers, §35-6A-6.
Expense allowance, §35-6A-5.
Federal department of homeland security's secure communities initiative.
Grant or incentive program, establishment, duty, §35-6A-10.

CRIMINAL JUSTICE COORDINATING COUNCIL —Cont'd
Functions, §35-6A-7.
Limitations, §35-6A-8.
Georgia bureau of investigation.
Assigned to, §35-6A-2.
Gifts.
Acceptance and use, §35-6A-9.
Immigration law.
Enforcement.
Incentive programs and grants, duty, §35-6A-10.
Intent of legislature, §35-6A-1.
Legislative declaration, §35-6A-1.
Meetings, §35-6A-4.
Members, §35-6A-3.
Officers, §35-6A-4.
Powers, §35-6A-7.
Limitations, §35-6A-8.
Property.
Acceptance and use of gifts, grants and donations, §35-6A-9.
Public officers and employees.
Membership not bar to holding public office, §35-6A-3.
Vacancies, §35-6A-3.

CRIMINAL LAW AND PROCEDURE.
Adult bookstores and movie houses.
Restricted to certain locations, §36-60-3.
Aged persons.
Protection of disabled adults and elder persons.
Bureau of investigation, investigation of offenses, §35-3-4.
Attorneys.
Criminal history records of defendants or witnesses.
Duty to make available to defendant's attorney on request, §35-3-34.
Municipal court criminal proceedings.
Right to counsel, §36-32-1.
Burglar alarms.
Local governments.
Installation, service, sale, etc., §36-60-12.
Business licenses.
Evidence of state licensure before issuance.
False or misleading evidence, §36-60-6.

CRIMINAL LAW AND PROCEDURE —Cont'd
Cemeteries.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located.
Violations of provisions, §36-72-16.
Computer or electronic pornography and child exploitation, §35-3-4.1.
County building and electrical codes.
Violations, §36-13-12.
County buildings.
Destruction or damaging, §36-9-11.
County granted state funds.
Falsely claiming tax credits, §36-17-23.
County law libraries.
Costs.
Additional costs in certain criminal cases, §36-15-9.
County purchases or orders.
Speculating in by county officer, §36-1-13.
County surveyors.
False surveys, §36-7-16.
County treasurers.
County orders.
Purchases at less than full value or refusal to pay order, §36-6-28.
Criminal history records of defendants or witnesses.
Duty to make available to defendant's attorney on request, §35-3-34.
Definitions.
Obscene materials.
Distribution of material depicting nudity or sexual conduct, §35-3-4.1.
Disabled persons.
Protection of disabled adults and elder persons.
Bureau of investigation, investigation of offenses, §35-3-4.
Division of forensic sciences reports.
Methods and findings of examination or analysis.
Prima-facie evidence of facts contained, service on defendant, objection by defendant, §35-3-154.1.
DNA sampling, collection, analysis.
Persons convicted of felony offenses.
Generally, §§35-3-160 to 35-3-165.

CRIMINAL LAW AND PROCEDURE —Cont'd
DNA sampling, collection, analysis —Cont'd
Persons convicted of felony offenses —Cont'd
Unlawful dissemination of information, obtaining sample without authority, §35-3-164.
Persons convicted of felony offenses (eff 1/1/2013).
Generally, §§35-3-160 to 35-3-165.
Unlawful dissemination of information, obtaining sample without authority, §35-3-164.
Drug related objects.
Municipal court jurisdiction over cases involving drug object transactions, §36-32-6.1.
Elderly persons and disabled adults.
Disabled adults and elder persons protection act.
Bureau of investigation, investigation of offenses, §35-3-4.
Electronically furnishing obscene material to minors, §35-3-4.1.
Electronic security systems.
Local governments.
Installation, service, sale, etc., §36-60-12.
Emblems.
Bureau of investigation nomenclature act, §35-3-108.
Public safety nomenclature act, §35-2-88.
Evidence.
Division of forensic sciences reports.
Prima-facie evidence of facts contained, service on defendant, objection by defendant, §35-3-154.1.
DNA sampling, collection, analysis.
Persons convicted of felony offenses, §§35-3-160 to 35-3-165.
Examination or analysis by state crime laboratory.
Reports of methods and findings.
Prima-facie evidence of facts contained, service on defendant, objection by defendant, §35-3-154.1.
State crime laboratory reports.
Prima-facie evidence of facts contained, service on defendant, objection by defendant, §35-3-154.1.

CRIMINAL LAW AND PROCEDURE —Cont'd
Evidence (eff 1/1/2013).
DNA sampling, collection, analysis.
Persons convicted of felony offenses, §§35-3-160 to 35-3-165.
Fire alarms.
Local governments.
Installation, service, sale, etc., §36-60-12.
Human trafficking.
Labor or sexual servitude, trafficking of persons for.
Bureau of investigation.
Duty to identify and investigate violations, §35-3-4.
Subpoena power for investigating violations, §35-3-4.3.
Training law enforcement officers investigating crimes involving, §35-1-16.
Local business licenses.
Investigation of business for issuance, §36-60-9.
Municipal corporations.
Grants of state funds, §§36-40-22, 36-40-42.
Nomenclature of municipal and county police departments, §35-10-10.
Obscene telephone contact, §35-3-4.1.
Offenses against public health and morals.
Obscenity and related offenses.
Electronically furnishing obscene material to minors, §35-3-4.1.
Offenses related to minors generally, §35-3-4.1.
Radios.
State wavelength.
Unauthorized, §35-1-5.
State crime laboratory reports.
Methods and findings of examination or analysis.
Prima-facie evidence of facts contained, service on defendant, objection by defendant, §35-3-154.1.
Trespass.
Municipal court jurisdiction, §36-32-10.1.
Zoning.
Conflicts of interest, §36-67A-4.

CRIMINAL STREET GANGS.
Peace officers standards and training council.
Establishment of training courses for peace officers, §35-8-7.

CRIMINAL TRESPASS.
Municipal court jurisdiction, §36-32-10.1.

CRYPTS.
Cemetery or cemeteries defined, §36-72-2.

CURATORS.
Bonds or other obligations issued by municipality or county.
Legal investments, §36-61-13.

CURBS.
Improvements by municipal corporations.
Basis of assessments, §36-39-4.

CYCLORAMA.
Grants.
Repairs of facilities of historical value, §36-40-1.

D

DAMAGES.
Claims against local government entities.
Punitive or exemplary damages, §36-92-4.
Municipal corporations.
Immunity from liability, §36-33-1.
Nomenclature of municipal and county police departments, §35-10-9.
Public safety nomenclature act, §35-2-87.
Punitive damages.
Nomenclature of municipal and county police departments, §35-10-9.
Special damages.
Municipal officers.
Acts or omissions, §36-33-4.

DAMS.
Hydroelectric power production, §36-64-3.1.

DAY-CARE CENTERS.
Employment of person with prior criminal background.
Exchange of national criminal history background information, §35-3-34.2.

DAY-CARE CENTERS —Cont'd
Exonerated first offender's criminal record.
Disclosure.
Employment with day care or after-school program, §35-3-34.1.

DEAF AND HEARING IMPAIRED PERSONS.
TDD's.
Training of communications officers, §35-8-23.
Telephones.
Law enforcement officers.
TDD training for communications officers, §35-8-23.

DEANNEXATION.
Annexation of deannexed property by municipal corporations, §36-35-2.

DEATH.
Identification of deceased persons.
Information assisting in.
Duties of law enforcement agencies, §35-1-8.

DEBT OF LOCAL GOVERNMENT AUTHORITIES, §36-80-16.
Payments in lieu of taxes.
PILOT restriction act, §36-80-16.1.

DEBTORS AND CREDITORS.
Counties.
Claims against counties, §§36-11-1 to 36-11-7.
Not authorized to seek relief from payment of debts, §36-80-5.
Local government.
Not authorized to seek relief from payment of debts, §36-80-5.
Municipal corporations.
Not authorized to seek relief from payment of debts, §36-80-5.
Political subdivisions.
Not authorized to seek relief from payment of debts, §36-80-5.
Water supply.
Cutoff of water to premises, §36-60-17.

DEBTS OF LOCAL GOVERNMENT.
County or municipality not authorized to seek relief from payment, §36-80-5.

DECLARATORY JUDGMENTS.
Annexation.
Application by owners of 60 percent of land and 60 percent of electors.
Determination of validity of annexation, §36-36-39.

DEFACEMENT.
County buildings and contents, §36-9-11.
Urban redevelopment.
Notices on dwellings, §36-61-11.

DEFAMATION.
Georgia bureau of investigation.
Dissemination of records.
Immunity from liability, §§35-3-34, 35-3-35.

DEFINED TERMS.
Abandoned cemetery, §36-72-2.
Academy.
Georgia county leadership academy, §36-20-3.
Georgia police academy, §35-4-2.
Accessory equipment.
Advanced broadband collocation act, §36-66B-3.
Adult bookstore, §36-60-3.
Adult movie house, §36-60-3.
Ad valorem property taxes.
Redevelopment, §36-44-3.
Ad valorem taxes.
Enterprise zone employment, §36-88-3.
Advertising and home shopping services revenues.
Consumer choice for television act, §36-76-2.
Affected local governing authority.
Consumer choice for television act, §36-76-2.
Affected local government.
Bidding for government works projects, §36-91-100.
Affected municipality.
Service delivery.
Dispute resolution procedures, §36-70-25.1.
Agencies.
Urban redevelopment, §36-61-2.
Alert system.
Mattie's call act, §35-3-171.
Alternative bid.
Local government public works bidding, §36-91-2.

DEFINED TERMS —Cont'd
Amount.
Georgia allocation system, §36-82-182.
Annual savings.
Pension obligation bonds.
Local government and political subdivisions, §36-82-9.
Antenna.
Advanced broadband collocation act, §36-66B-3.
Applicant.
Peace officers, §35-8-2.
Zoning, §36-67A-1.
Application.
Advanced broadband collocation act, §36-66B-3.
Georgia allocation system, §36-82-182.
Appointing authority.
Special policemen, §35-9-1.
Archeologist.
Abandoned cemeteries and burial grounds, §36-72-2.
Area of operation.
Redevelopment, §36-44-3.
Urban redevelopment, §36-61-2.
Audit.
Electronic transmission of budgets, §36-80-21.
Authorization.
Cable television fair competition, §36-90-2.
Authorized agency.
Crime information center, §35-3-34.2.
Badge.
Bureau of investigation nomenclature act, §35-3-101.
Nomenclature of municipal and county police departments, §35-10-3.
Public safety nomenclature act, §35-2-81.
Base bid.
Local government public works bidding, §36-91-2.
Benefit system.
County group health benefits program, §36-21-2.
Bid.
Bid bonds.
Local government bidding and contracting, §36-91-52.
Bid bond.
Local government public works bidding, §36-91-2.
Bidder.
Bid bonds.
Local government bidding and contracting, §36-91-52.

DEFINED TERMS —Cont'd
Blighted or distressed area.
Redevelopment, §36-44-3.
Blue alert, §35-3-191.
Bonds.
Downtown development authorities, §36-42-3.
Georgia allocation system, §36-82-182.
Interest on local government obligations other than general obligation bonds, §36-82-121.
Urban redevelopment, §36-61-2.
Urban residential finance authorities, §36-41-3.
Borrowers.
Georgia allocation system, §36-82-182.
Budget.
Local government, §36-81-2.
Electronic transmission of budgets, §36-80-21.
Budget officer.
Local government, §36-81-2.
Budget ordinance or resolution.
Local government, §36-81-2.
Budget period.
Local government, §36-81-2.
Bureau.
Georgia bureau of investigation, §35-3-1.
Burial ground.
Abandoned cemeteries and burial grounds, §36-72-2.
Burial objects.
Abandoned cemeteries and burial grounds, §36-72-2.
Business day.
Georgia allocation system, §36-82-182.
Business enterprises.
Enterprise zone employment, §36-88-3.
Business entity.
Zoning.
Conflicts of interest, §36-67A-1.
Cable service.
Cable television fair competition, §36-90-2.
Consumer choice for television act, §36-76-2.
Cable service provider.
Consumer choice for television act, §36-76-2.
Cable system.
Consumer choice for television act, §36-76-2.
Cable television system, §36-18-1.
Campaign contribution.
Zoning, §36-67A-1.

DEFINED TERMS —Cont'd
Candidates.
Peace officers, §35-8-2.
Capital costs.
Cable television fair competition, §36-90-2.
Capital improvement.
Development impact fees, §36-71-2.
Capital improvements element.
Development impact fees, §36-71-2.
Capital projects fund.
Local government, §36-81-2.
Capitol square.
Capitol police division, §35-2-120.
Care.
Crime information center, §35-3-34.2.
Career criminal, §35-3-30.
Carryforward election application.
Georgia allocation system, §36-82-182.
Cemetery.
Abandoned cemeteries and burial grounds, §36-72-2.
Center.
Georgia crime information center, §35-3-30.
Certified municipal judge, §36-32-21.
Change order.
Local government public works bidding, §36-91-2.
Chief of police.
Nomenclature of municipal and county police departments, §35-10-3.
Claims.
Claims against local government entities, §36-92-1.
Clerk.
Urban redevelopment, §36-61-2.
Clerk of the governing authority of a municipality.
Municipal training act, §36-45-20.
Code enforcement officer.
Local government code enforcement boards, §36-74-21.
Code inspector.
Local government code enforcement boards, §36-74-41.
Collection.
Resource recovery development authorities, §36-63-4.
Collocation.
Advanced broadband collocation act, §36-66B-3.
Communications officers.
Peace officer standards and training act, §35-8-23.

DEFINED TERMS —Cont'd
Competitive pool.
Georgia allocation system, §36-82-182.
Competitive sealed bidding.
Local government public works bidding, §36-91-2.
Competitive sealed proposals.
Local government public works bidding, §36-91-2.
Comprehensive plan.
Counties and municipalities, §36-70-2.
Development impact fees, §36-71-2.
Confirmation of issuance.
Georgia allocation system, §36-82-182.
Contiguous area.
Annexation, §§36-36-20, 36-36-31, 36-36-52, 36-36-90.
Contract.
County group health benefits program, §36-21-2.
Coordinated and comprehensive planning.
Counties and municipalities, §36-70-2.
Corporation.
County group health benefits program, §36-21-2.
Cost of any project.
Downtown development authorities, §36-42-3.
Cost of project.
Public safety and judicial facilities authorities, §36-75-3.
Cost of the project.
Development authorities, §36-62-2.
Downtown development authorities, §36-42-3.
Resource recovery development authorities, §36-63-4.
Counterparty.
Interest rate management agreements, §36-82-250.
County.
Coordinated and comprehensive planning by counties and municipalities, §36-70-2.
County group health benefits program, §36-21-2.
Development authorities, §36-62-2.
Interlocal risk management agencies, §36-85-1.
Municipality control of parks and fire stations, §36-31-11.1.
Public safety and judicial facilities authorities, §36-75-3.
Resource recovery development authorities, §36-63-4.

DEFINED TERMS —Cont'd
County —Cont'd
Urban redevelopment, §36-61-2.
County document, §36-9-5.
County governing authority, §36-20-3.
Compensation, §36-5-24.
County millage rate.
Homeowner tax relief grants, §36-89-1.
County or municipal codes and ordinances.
Local government code enforcement boards, §§36-74-21, 36-74-41.
Covered.
Claims against local government entities, §36-92-1.
Crime lab.
Forensic sciences division, §35-3-150.
Criminal justice information, §35-3-30.
Criminal justice information system, §35-3-30.
Cross-subsidization.
Cable television fair competition, §36-90-2.
Debt.
Local government authorities, §36-80-16.
Debt service fund.
Local government budgets and audits, §36-81-2.
Department head.
Law enforcement unit, §35-8-2.
Depository institution.
Local government investment pool, §36-83-3.
Descendant.
Abandoned cemeteries and burial grounds, §36-72-2.
Detention facility.
DNA analysis of persons convicted of felony offenses, §35-3-160.
DNA analysis of persons convicted of felony offenses (eff 1/1/2013), §35-3-160.
Peace officer, §35-8-2.
Public safety and judicial facilities authorities, §36-75-3.
Deteriorating area.
Redevelopment, §36-44-3.
Developer.
Development impact fees, §36-71-2.
Development.
Development impact fees, §36-71-2.
Development approval.
Development impact fees, §36-71-2.
DEFINED TERMS —Cont'd
Development authority, §36-62A-20.
Development exaction.
Development impact fees, §36-71-2.
Development impact fee, §36-71-2.
Development rights.
Transfer of development rights, §36-66A-1.
Direct costs.
Cable television fair competition, §36-90-2.
Director.
Bureau of investigation, §35-3-1.
Director of public safety.
Nomenclature of municipal and county police departments, §35-10-3.
Disability.
Bureau of investigation agents, §35-3-11.
Law enforcement officers, §35-2-49.1.
Disabled adult.
Mattie's call act, §35-3-171.
District.
City business improvement districts, §36-43-3.
District plan.
City business improvement districts, §36-43-3.
Downtown development authorities, §36-42-3.
Urban redevelopment, §36-61-2.
Drug court treatment program.
Crime information center, §35-3-37.
Economic development share.
Georgia allocation system, §36-82-182.
Electronic communication service.
Sex offenses against minors, §35-3-4.1.
Eligible assessed value.
Homeowner tax relief grants, §36-89-1.
Eligible household.
Urban residential finance authorities, §36-41-3.
Emblem.
Bureau of investigation nomenclature act, §35-3-101.
Nomenclature of municipal and county police departments, §35-10-3.
Public safety nomenclature act, §35-2-81.
Emergency.
Local government public works bidding, §36-91-2.
Emergency medical personnel.
Public safety training center, §35-5-2.
Emergency peace officers, §35-8-2.

DEFINED TERMS —Cont'd
Employee benefits.
County group health benefits program, §36-21-2.
Employees.
County group health benefits program, §36-21-2.
Employment related information.
Employment of law enforcement officers, §35-8-8.
Employment test.
Georgia allocation system, §36-82-182.
Encumber.
Development impact fees, §36-71-2.
Enterprise fund.
Local government budgets and audits, §36-81-2.
Enterprise zone, §36-88-3.
Entity.
Crime information center, §35-3-37.
Equipment compound.
Advanced broadband collocation act, §36-66B-3.
Exempt facility bond.
Georgia allocation system, §36-82-182.
Expenses in the nature of compensation.
County governing authorities, §36-5-24.
Expiration date.
Georgia allocation system, §36-82-182.
Explicit media outlet.
Adult bookstore and movie houses, §36-60-3.
FCC.
Cable television fair competition, §36-90-2.
Federal code.
Georgia allocation system, §36-82-182.
Federal government.
Urban redevelopment, §36-61-2.
Federally aided mortgage.
Urban residential finance authorities, §36-41-3.
Federal officials or law enforcement officers.
Local governments, §36-80-23.
Fee payor.
Development impact fees, §36-71-2.
Fiduciary fund.
Local government budgets and audits, §36-81-2.
Filing date.
Georgia allocation system, §36-82-182.
Financial interest.
Zoning, §36-67A-1.

DEFINED TERMS —Cont'd
Fire station.
Municipality control of parks and fire stations, §36-31-11.1.
Fiscal authority.
Homeowner tax relief grants, §36-89-1.
Fiscal year.
Local government, §36-81-2.
Flexible pool.
Georgia allocation system, §36-82-182.
Flexible share.
Georgia allocation system, §36-82-182.
Franchise.
Consumer choice for television act, §36-76-2.
Franchise authority.
Consumer choice for television act, §36-76-2.
Franchising authority.
Cable television fair competition, §36-90-2.
Fresh pursuit.
Law enforcement officers, §35-1-15.
Frontage.
Municipal street improvements, §36-39-1.
Full-cost accounting.
Cable television fair competition, §36-90-2.
Full-time job equivalent.
Enterprise zone employment, §36-88-3.
Funds.
Local government budgets and audits, §36-81-2.
Genealogist.
Abandoned cemeteries and burial grounds, §36-72-2.
General fund.
Local government budgets and audits, §36-81-2.
General liability.
Interlocal risk management agency, §36-85-1.
Generally accepted governmental accounting principles.
Cable television fair competition, §36-90-2.
General obligation bonds, §36-82-121.
Georgia residential finance authority, §36-82-182.
Governing authority.
Coordinated and comprehensive planning by counties and municipalities, §36-70-2.
Interlocal risk management agency, §36-85-1.

DEFINED TERMS —Cont'd
Governing authority —Cont'd
Local government budgets and audits, §36-81-2.
Local government public works bidding, §36-91-2.
Governing bodies.
Commercial paper notes for government, §36-82-240.
Coordinated and comprehensive planning by counties and municipalities, §36-70-2.
County and municipal recreation systems, §36-64-1.
Development authorities, §36-62-2.
Downtown development authorities, §36-42-3.
Municipal corporations, §36-37-6.2.
Municipal street improvements, §36-39-1.
Public safety and judicial facilities authorities, §36-75-3.
Resource recovery development authorities, §36-63-4.
Revenue bond law, §36-82-61.
Urban residential finance authorities, §36-41-3.
Governmental body.
Revenue bond law, §36-82-61.
Governmental entity.
Commercial paper notes for government, §36-82-240.
Development impact fees, §36-71-2.
Local government public works bidding, §36-91-2.
Governmental unit.
Bond issues, §36-82-220.
Gross receipts.
Consumer choice for television act, §36-76-2.
Group self-insurance fund.
Interlocal risk management agency, §36-85-1.
HoDAG.
Georgia allocation system, §36-82-182.
Household.
Urban residential finance authorities, §36-41-3.
Housing authority.
Urban redevelopment, §36-61-2.
Housing bonds.
Georgia allocation system, §36-82-182.
Housing share.
Georgia allocation system, §36-82-182.
Human remains.
Abandoned cemeteries and burial grounds, §36-72-2.

DEFINED TERMS —Cont'd
Immigration status.
Local governments, §36-80-23.
Immigration status information.
Local governments, §36-80-23.
Improve.
Municipal street improvements, §36-39-1.
Improvement.
Municipal street improvements, §36-39-1.
Income.
Urban residential finance authorities, §36-41-3.
Incumbent service provider.
Consumer choice for television act, §36-76-2.
Independent financial adviser.
Interest rate management agreements, §36-82-250.
Independent test.
Forensic sciences division, §35-3-150.
Indirect costs.
Cable television fair competition, §36-90-2.
Institute.
Harold F. Holtz municipal training institute, §36-45-3.
Interest rate management plan.
Local government, §36-82-250.
Interlocal risk management agency, §36-85-1.
Interlocal risk management program, §36-85-1.
Internal service fund.
Local government budgets and audits, §36-81-2.
Issued.
Georgia allocation system, §36-82-182.
Issuer.
Georgia allocation system, §36-82-182.
Jail officer.
Law enforcement unit, §35-8-2.
Judicial facilities.
Public safety and judicial facilities authorities, §36-75-3.
Juvenile correctional facility.
Law enforcement unit, §35-8-2.
Juvenile correctional officer.
Law enforcement unit, §35-8-2.
Lake.
Sale or disposal of county property, §36-9-3.
Law enforcement agency, §35-3-30.
Blue alert system, §35-3-191.

DEFINED TERMS —Cont'd
Law enforcement officer.
Fresh pursuit, §35-1-15.
Law enforcement support personnel, §35-8-2.
Law enforcement unit, §35-8-2.
Lead local authority.
Bidding for government works projects, §36-91-100.
Lease or installment purchase contract.
Interest rate management agreements, §36-82-250.
Legal counsel.
Georgia allocation system, §36-82-182.
Legal level of control.
Local government budgets and audits, §36-81-2.
Lending institutions.
Urban residential finance authorities, §36-41-3.
Level debt structure.
Pension obligation bonds.
Local government and political subdivisions, §36-82-9.
Level of service.
Development impact fees, §36-71-2.
Local authorities.
Bond issues, §36-82-220.
Local governments, §36-80-17.
Local authority.
Bidding for government works projects, §36-91-100.
Local emergency.
Mutual aid, §36-69-2.
Local governing authority.
Advanced broadband collocation act, §36-66B-3.
Bidding for government works projects, §36-91-100.
Codification of ordinances, §36-80-19.
Nomenclature of municipal and county police departments, §35-10-3.
Local governing body.
Immigration sanctuary policies, §36-80-23.
Local government code enforcement boards, §§36-74-21, 36-74-41.
Urban redevelopment, §36-61-2.
Local governing body attorney.
Local government code enforcement boards, §§36-74-21, 36-74-41.
Local government.
Budgets and audits, §36-81-2.
Electronic transmission of budgets, §36-80-21.

DEFINED TERMS —Cont'd
Local government —Cont'd
Coordinated and comprehensive planning by counties and municipalities, §36-70-2.
Local government investment pool, §36-83-3.
Private toll roads and bridges, §36-60-21.
Purchasing, §36-84-1.
Zoning, §§36-66-3, 36-67A-1.
Local government authorities, §36-80-16.
Local government entity.
Claims against local government entities, §36-92-1.
Interest rate management agreements, §36-82-250.
Local government officer or employee.
Claims against local government entities, §36-92-1.
Local government official.
Zoning, §36-67A-1.
Local government service.
Local government efficiency act, §36-86-3.
Local government unit.
Local government efficiency act, §36-86-3.
Local housing authorities.
Georgia allocation system, §36-82-182.
Local law enforcement agency.
Kimberly's call, §35-3-190.
Mattie's call act, §35-3-171.
Local legislative body.
Redevelopment, §36-44-3.
Local official or employee.
Immigration sanctuary policies, §36-80-23.
Loss.
Claims against local government entities, §36-92-1.
Low-income and moderate-income individual.
Enterprise zone employment, §36-88-3.
Mayor.
Urban redevelopment, §36-61-2.
Mechanisms.
Coordinated and comprehensive planning by counties and municipalities, §36-70-2.
Median household income.
Urban residential finance authorities, §36-41-3.

DEFINED TERMS —Cont'd
Member county.
County group health benefits program, §36-21-2.
Member of the family.
Zoning, §36-67A-1.
Mental health treatment program.
Crime information center, §35-3-37.
Minimum standards and procedures.
Coordinated and comprehensive planning by counties and municipalities, §36-70-2.
Missing child, §35-3-80.
Missing child report, §35-3-80.
Modification.
Advanced broadband collocation act, §36-66B-3.
Modify.
Advanced broadband collocation act, §36-66B-3.
Mortgage credit certificate.
Georgia allocation system, §36-82-182.
Mortgages.
Urban residential finance authorities, §36-41-3.
Motor vehicle.
Claims against local government entities, §36-92-1.
Motor vehicle liability.
Interlocal risk management agencies, §36-85-1.
Multifamily housing bond.
Georgia allocation system, §36-82-182.
Municipal corporations.
Annexation, §36-36-30.
Annexation of incorporated islands, §36-36-90.
Development authorities, §36-62-2.
Downtown development authorities, §36-42-3.
Grants for capital outlay items, §36-40-40.
Grants for public purposes, §36-40-21.
Public safety and judicial facilities authorities, §36-75-3.
Resource recovery development authorities, §36-63-4.
Street improvements, §36-39-1.
Municipal court, §36-32-21.
Clerks, training, §36-32-13.
Municipal governing authority.
Municipal training, §36-45-3.
Municipality.
City business improvement districts, §36-43-3.
DEFINED TERMS —Cont'd
Municipality —Cont'd
Coordinated and comprehensive planning by counties and municipalities, §36-70-2.
Interest on local government obligations other than general obligation bonds, §36-82-121.
Interlocal risk management agencies, §36-85-1.
Urban redevelopment, §36-61-2.
Urban residential finance authorities, §36-41-3.
Municipal judge, §36-32-21.
Municipal probation officer.
Law enforcement officers, §35-8-13.1.
National criminal history background check.
Crime information center, §35-3-34.2.
New job.
Enterprise zone employment, §36-88-3.
Nonprofit housing corporation.
Urban residential finance authorities, §36-41-3.
Nonserious traffic offense.
Crime information center, §35-3-37.
Normal working hours.
County courthouse, §36-1-12.
Notice of allocation, §36-82-182.
Obligation.
Bond issues, §36-82-220.
Obligee.
Urban redevelopment, §36-61-2.
Occurrence.
Claims against local government entities, §36-92-1.
Offense.
Crime information center, §35-3-30.
Opponent.
Zoning, §36-67A-1.
Oppose.
Zoning, §36-67A-1.
Original programming.
Consumer choice for television act, §36-76-2.
Park.
Municipality control of parks and fire stations, §36-31-11.1.
Pave.
Municipal street improvements, §36-39-1.
Payment bond.
Local government public works bidding, §36-91-2.
Payments in lieu of taxes.
PILOT restriction act, §36-80-16.1.

DEFINED TERMS —Cont'd
Peace officer, §35-8-2.
Blue alert system, §35-3-191.
Enforcement of immigration and customs laws in state, §35-2-14.
PEG.
Consumer choice for television act, §36-76-2.
Pension obligation bond.
Local government and political subdivisions, §36-82-9.
Performance bond.
Local government public works bidding, §36-91-2.
Periods.
Georgia allocation system, §36-82-182.
Person.
Bureau of investigation nomenclature act, §35-3-101.
Georgia allocation system, §36-82-182.
Nomenclature of municipal and county police departments, §35-10-3.
Private toll roads and bridges, §36-60-21.
Public safety nomenclature act, §35-2-81.
Transfer of development rights, §36-66A-1.
Urban redevelopment, §36-61-2.
Zoning, §36-67A-1.
Police officer, §35-4-2.
Policy guidelines.
Georgia allocation system, §36-82-182.
Political subdivision.
Bond issues.
Reporting requirements, §36-82-10.
Liability for computer malfunctions, §36-60-20.
Redevelopment, §36-44-3.
Present value.
Development impact fees, §36-71-2.
Preserve and protect.
Abandoned cemeteries and burial grounds, §36-72-2.
Private activity portion of governmental use bonds.
Georgia allocation system, §36-82-182.
Private provider.
Cable television fair competition, §36-90-2.
Project improvements.
Development impact fees, §36-71-2.
Projects.
Bidding for government works projects, §36-91-100.

DEFINED TERMS —Cont'd
Projects —Cont'd
Development authorities, §36-62-2.
Development impact fees, §36-71-2.
Downtown development authorities, §36-42-3.
Georgia allocation system, §36-82-182.
Private toll roads and bridges, §36-60-21.
Public safety and judicial facilities authorities, §36-75-3.
Resource recovery development authorities, §36-63-4.
Urban residential financial authorities, §36-41-3.
Property damage.
Interlocal risk management agencies, §36-85-1.
Property interest.
Zoning, §36-67A-1.
Property owned by the state, §35-1-6.
Proportionate share.
Development impact fees, §36-71-2.
Prosecuting attorney.
Crime information center, §35-3-37.
Provider.
Crime information center, §35-3-34.2.
Public agency.
Interlocal governmental cooperation, §36-69A-3.
Public body.
Urban redevelopment, §36-61-2.
Public facilities.
Development impact fees, §36-71-2.
Public right of way.
Consumer choice for television act, §36-76-2.
Public safety facilities.
Public safety and judicial facilities authorities, §36-75-3.
Public works construction.
Local government public works bidding, §36-91-2.
Qualified application.
Georgia allocation system, §36-82-182.
Qualified entity.
Crime information center, §35-3-34.2.
Qualified homestead.
Homeowner tax relief grants, §36-89-1.
Qualified housing project.
Georgia allocation system, §36-82-182.
Qualified housing sponsor.
Urban residential finance authorities, §36-41-3.

DEFINED TERMS —Cont'd
Qualified interest rate management agreement.
Interest rate management agreements, §36-82-250.
Qualified municipality.
Municipality control of parks and fire stations, §36-31-11.1.
Qualified or qualifying business.
Enterprise zone employment, §36-88-3.
Real property.
Urban redevelopment, §36-61-2.
Urban residential finance authorities, §36-41-3.
Zoning, §36-67A-1.
Receiving area.
Transfer of development rights, §36-66A-1.
Receiving property.
Transfer of development rights, §36-66A-1.
Recovery agency.
Stolen motor vehicle reports, §35-1-4.
Redevelopment, §36-44-3.
Redevelopment agencies, §36-44-3.
Redevelopment area, §36-44-3.
Redevelopment costs, §36-44-3.
Redevelopment plan, §36-44-3.
Region.
Coordinated and comprehensive planning by counties and municipalities, §36-70-2.
Regional development center.
Coordinated and comprehensive planning by counties and municipalities, §36-70-2.
Regional medical examiner.
Forensic sciences division, §35-3-150.
Rehabilitation.
Urban redevelopment, §36-61-2.
Rehabilitation costs.
Urban residential finance authorities, §36-41-3.
Remote electronic communication service.
Sex offenses against minors, §35-3-4.1.
Repeat violation.
Local government code enforcement boards, §§36-74-21, 36-74-41.
Reporting agency.
Stolen motor vehicle reports, §35-1-4.
Reservations.
Georgia allocation system, §36-82-182.
Residential housing.
Urban residential finance authorities, §36-41-3.

DEFINED TERMS —Cont'd
Resolution.
Redevelopment, §36-44-3.
Resources.
Resource recovery development authorities, §36-63-4.
Responsible bidder.
Local government public works bidding, §36-91-2.
Responsible offeror.
Local government public works bidding, §36-91-2.
Responsive bidder.
Local government public works bidding, §36-91-2.
Responsive offeror.
Local government public works bidding, §36-91-2.
Restrict.
Crime information center, §35-3-37.
Restricted.
Crime information center, §35-3-37.
Restriction.
Crime information center, §35-3-37.
Retired peace officer, §35-8-2.
Revenue.
Revenue bond law, §36-82-61.
Revenue bonds.
Downtown development authorities, §36-42-3.
Rezoning action.
Conflicts of interest, §36-67A-1.
Risk assessment classification.
Bureau of investigation, §35-3-4.
Rule.
Forensic sciences division, §35-3-150.
Sanctuary policy.
Immigration sanctuary policies, §36-80-23.
School millage rate.
Homeowner tax relief grants, §36-89-1.
Schools.
Municipal courts training council, §36-32-21.
Peace officers, §35-8-2.
Scope of project.
Local government public works bidding, §36-91-2.
Scope of work.
Local government public works bidding, §36-91-2.
Seal.
Bureau of investigation nomenclature act, §35-3-101.
Security interests.
Urban residential finance authorities, §36-41-3.

DEFINED TERMS —Cont'd
Sending area.
Transfer of development rights, §36-66A-1.
Sending property.
Transfer of development rights, §36-66A-1.
Serious violent felony.
Crime information center, §35-3-37.
Service.
Cable television fair competition, §36-90-2.
Local government efficiency act, §36-86-3.
Service area.
Consumer choice for television act, §36-76-2.
Development impact fees, §36-71-2.
Service enterprise.
Enterprise zone employment, §36-88-3.
Sewage sludge.
Resource recovery development authorities, §36-63-4.
Sexual conduct.
Adult bookstores and movie houses, §36-60-3.
Sexual explicit nudity.
Adult bookstores and movie houses, §36-60-3.
Sexual offender.
Bureau of investigation, §35-3-4.
Single-family housing bond.
Georgia allocation system, §36-82-182.
Slum area.
Urban redevelopment, §36-61-2.
Slum clearance and redevelopment, §36-61-2.
Small issue bond.
Georgia allocation system, §36-82-182.
Sole source.
Local government public works bidding, §36-91-2.
Solid waste.
Resource recovery development authorities, §36-63-4.
Special fund.
Redevelopment, §36-44-3.
Special revenue fund.
Local government budgets and audits, §36-81-2.
Speed detection device, §35-8-2.
Sponsoring governmental unit.
Bond issues, §36-82-220.
State.
County leadership training, §36-20-3.

DEFINED TERMS —Cont'd
State —Cont'd
Crime information center, §35-3-37.
Georgia allocation system, §36-82-182.
Interlocal governmental cooperation, §36-69A-3.
Municipal training, §36-45-3.
Police academy, §35-4-2.
Urban residential finance authorities, §36-41-3.
State-aided mortgage.
Urban residential finance authorities, §36-41-3.
State ceiling.
Georgia allocation bond, §36-82-182.
State millage rate.
Homeowner tax relief grants, §36-89-1.
Streets.
Municipal street improvements, §36-39-1.
Student.
Urban residential finance authorities, §36-41-3.
Student loan bond.
Georgia allocation system, §36-82-182.
Subrecipient.
Local government budgets and audits, §36-81-8.1.
Subscriber.
Cable television fair competition, §36-90-2.
Consumer choice for television act, §36-76-2.
Supplemental services.
City business improvement districts, §36-43-3.
System.
Georgia allocation system, §36-82-182.
System improvement costs.
Development impact fees, §36-71-2.
System improvements.
Development impact fees, §36-71-2.
Taxable property.
Redevelopment, §36-44-3.
Taxable value.
Redevelopment, §36-44-3.
Tax allocation bonds.
Redevelopment, §36-44-3.
Tax allocation district.
Redevelopment, §36-44-3.
Tax allocation increment.
Redevelopment, §36-44-3.
Tax allocation increment base.
Redevelopment, §36-44-3.
Taxpayer.
City business improvement districts, §36-43-3.

DEFINED TERMS —Cont'd
Territorial boundaries.
Zoning, §36-66-3.
Terroristic act, §35-3-62.
Transfer of development rights, §36-66A-1.
Transfer ratio.
Transfer of development rights, §36-66A-1.
UDAG bonds.
Georgia allocation system, §36-82-182.
Undertaking.
Revenue bond law, §36-82-61.
Unincorporated islands.
Annexation, §36-36-90.
Unit of local government.
Local government budgets and audits, §§36-81-2, 36-81-8.1.
Unused amount.
Georgia allocation system, §36-82-182.
Urban redevelopment agency, §36-61-2.
Urban redevelopment area, §36-61-2.
Urban redevelopment plan, §36-61-2.
Urban redevelopment project, §36-61-2.
Urban residential finance authority, §36-82-182.
Used for residential purposes.
Annexation, §36-36-15.
Video programming.
Consumer choice for television act, §36-76-2.
Video service.
Consumer choice for television act, §36-76-2.
Video service provider.
Consumer choice for television act, §36-76-2.
Vinson institute, §36-45-3.
Electronic transmission of budgets, §36-80-21.
Violation involving the health or safety of a third party.
Local government code enforcement boards, §§36-74-21, 36-74-41.
Volunteer firefighters.
Counties and municipalities, §36-60-23.
Website.
Electronic transmission of budgets, §36-80-21.
Willful violator.
Bureau of investigation nomenclature act, §35-3-101.

DEFINED TERMS —Cont'd
Willful violator —Cont'd
Nomenclature of municipal and county police departments, §35-10-3.
Public safety nomenclature act, §35-2-81.
Wireless facility.
Advanced broadband collocation act, §36-66B-3.
Wireless support structure.
Advanced broadband collocation act, §36-66B-3.
Youthful offender.
Crime information center, §35-3-37.
Zoning, §36-66-3.
Zoning decision, §36-66-3.
Zoning ordinance, §36-66-3.

DEMOLITION.
Buildings and housing.
County courthouses, §36-9-2.1.
Development authorities.
Powers generally, §36-62-6.
Local governmental powers.
Generally, §36-61-8.
Ordinances relating to demolition of dwellings unfit for human habitation, §36-61-11.
Resource recovery development authorities.
Powers generally, §36-63-8.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
County courthouses, §36-9-2.1.

DEPARTMENT OF PUBLIC SAFETY NOMENCLATURE ACT OF 1995.
General provisions, §§35-2-80 to 35-2-88.
Short title, §35-2-80.

DEPOSITS.
Counties.
Bank or trust company account identified as for county, §36-1-9.
County treasurers.
Depositories.
Bonds, surety, §36-6-17.
Deposit of county funds in, §36-6-16.
Funds held for benefit of third persons or litigants by officer of county or court.
Deposit in treasury of counties having population of 500,000 or more, §36-6-16.1.
Interest on deposits, §36-6-18.

DEPUTIES.
County surveyors, §36-7-1.
Peace officers.
Special deputy.
Appointment of citizen of adjoining state, §35-8-19.
Police officers.
Special policeman, §35-9-2.
Public safety commissioner, §35-2-7.
Headquarters, §35-2-13.
Staff, §35-2-34.
Secretary of state.
Boundary disputes.
Land surveyor's fees.
Fixing by secretary or his designated deputy, §36-3-26.
Superior courts.
Clerks of court.
County law librarians, §36-15-2.

DESCENDANTS.
Cemeteries sought to be developed.
Concerns and comments of descendants of persons in cemetery.
Consideration in decision making process, §36-72-8.
Identification and notification of descendants of persons in cemetery, §§36-72-5, 36-72-6, 36-72-9.
Public hearing on development, §36-72-7.
Right to appeal decision on application from permit, §36-72-11.

DEVELOPMENT.
Cemeteries.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located, §§36-72-1 to 36-72-16.
Definitions.
Impact fees, §36-71-2.
Impact fees, §§36-71-1 to 36-71-13.
Redevelopment.
Powers of counties and municipalities generally, §§36-44-1 to 36-44-23.
Transfer of development rights, §36-66A-2.
Definitions, §36-66A-1.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.

DEVELOPMENT AUTHORITIES.
Contiguous counties creating joint authority, §36-62-5.1.
County and municipal development authorities, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Bond issues, §§36-62-8 to 36-62-10.
Bond anticipation notes, §36-62-8.
Findings prerequisite to issuance, §36-62-9.
Indebtedness of state for political subdivisions, §36-62-10.
Powers of authorities, §36-62-6.
Securities act.
Not subject to regulation under, §36-62-11.
Citation of law, §36-62-1.
Conflict of laws, §36-62-11.
Conflicts of interest.
Directors, §36-62-5.
Constitutional authority for provisions, §36-62-3.
Creation, §36-62-4.
Joint authorities, §36-62-5.1.
Definition of development authority, §36-62A-20.
Definitions, §36-62-2.
Directors, §§36-62-4, 36-62-5.
Training on development and redevelopment programs required, §36-62A-21.
Exception for directors of downtown development authorities, §36-62A-22.
Dissolution, §36-62-14.
Disposition of property.
Dissolution by operation of law, §36-62-13.
Eminent domain.
Authority not authorized to exercise power, §36-62-6.
Joint authorities, §36-62-5.1.
Legislative findings, §36-62-3.
Perpetual existence, §§36-62-5, 36-62-14.
Powers, §§36-62-6, 36-62-7.
Previously created authority not affected by provisions, §36-62-12.
Property.
Disposition of property upon dissolution by operation of law, §36-62-13.
Powers of authorities, §§36-62-6, 36-62-7.
Purposes of provisions, §36-62-9.

DEVELOPMENT AUTHORITIES —Cont'd
County and municipal development authorities —Cont'd
Real property within adjoining county which will be exchanged for federal property.
Obtaining, §36-62-6.1.
Resolution of need for authority to function.
Adoption and filing, §36-62-4.
Joint authorities, §36-62-5.1.
Saving provisions.
Previously created authority not affected by provisions, §36-62-12.
Securities.
Bonds not subject to regulation under securities act, §36-62-11.
Taxation.
Exemptions, §36-62-3.
Title of law.
Short title, §36-62-1.
Training for directors and members of governing bodies.
Required training on development and redevelopment programs, §36-62A-21.
Exception for directors of downtown development authorities, §36-62A-22.
Downtown development authorities.
General provisions, §§36-42-1 to 36-42-16.
Interest.
County and municipal development authorities.
Bond issues, §36-62-8.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.
Tax credit for business enterprise.
Enterprise located in authority created by contiguous counties, §36-62-5.1.
Tax exemptions.
County and municipal development authorities, §36-62-3.

DEVELOPMENT AUTHORITIES LAW.
County and municipal development authorities.
General provisions, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Short title, §36-62-1.

DEVELOPMENT IMPACT FEE ACT.
Georgia development impact fee act.
General provisions, §§36-71-1 to 36-71-13.
Short title, §36-71-1.

DEVELOPMENT IMPACT FEES, §§36-71-1 to 36-71-13.
Advisory committee, §36-71-5.
Agreements.
Intergovernmental agreements, §36-71-11.
Private agreements between property owners or developers and municipalities and counties, §36-71-13.
Appeal of fee determination, §36-71-10.
Arbitration of fee disputes, §36-71-10.
Authorized, §36-71-3.
Calculation, §36-71-4.
Citation of act.
Short title, §36-71-1.
Conflict of laws.
Existing municipal and county laws to be brought into conformance with provisions, §36-71-12.
Credit for present value of construction accepted by municipality or county from developer, §36-71-7.
Definitions, §36-71-2.
Deposit of fees, §36-71-8.
Development impact fee advisory committee, §36-71-5.
Expenditure of fees, §36-71-8.
Expert witness fees.
Defined as system improvement costs, §36-7-12.
Hearings on proposed fee ordinance, §36-71-6.
Imposition, §36-71-3.
Intergovernmental agreements, §36-71-11.
Legislative declaration, §36-71-1.
Ordinances.
Hearings on, §36-71-6.
Imposition by ordinance, §36-71-3.
Required provisions, §§36-71-4, 36-71-9, 36-71-10.
Present value of construction accepted by municipality or county from developer.
Credit for, §36-71-7.

DEVELOPMENT IMPACT FEES —Cont'd
Project improvements.
Developer may be required to construct reasonable project improvements, §36-71-13.
Refunds, §36-71-9.
Reports.
Annual report, §36-71-8.
Title of act.
Short title, §36-71-1.
Water authorities.
Applicability of provisions to, §36-71-13.
Water or sewer service.
Hook-up or connection fees, §36-71-13.

DILAPIDATED BUILDINGS.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.

DISABILITY IN LINE OF DUTY.
Bureau of investigation.
Agents.
Retention of badge and weapon, §35-3-11.
Law enforcement officers, firefighters, prison guards and publicly employed EMTs.
State patrol.
Retention of badge and weapon, §35-2-49.1.

DISABLED PERSONS.
Elopement from personal care home or assisted living community.
Reporting to local police, time, §35-3-174.
Missing disabled adults.
Statewide alert system, §§35-3-170 to 35-3-180.
Protection of disabled adults and elder persons.
Bureau of investigation, investigation of offenses, §35-3-4.

DISASTERS.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.
Meaning of "local emergency," §36-69-2.
Peace officers.
Emergency officers, §35-8-2.

DISCIPLINING.
Georgia crime information center.
Powers, §35-3-32.
Law enforcement officers.
Revocation or suspension of certificate, §§35-8-7.1, 35-8-7.2.
Peace officers, §35-8-7.2.
Certified officers, §§35-8-7, 35-8-7.1.
Police officers.
Exempt officers, §§35-8-7, 35-8-7.1.
State patrol, §35-2-44.

DISCLAIMERS.
Audits of counties and municipalities.
Disclaimer of opinion by auditor, §36-60-8.
Audits of local governments.
Disclaimer of opinion by auditor, §36-81-7.

DISCOUNTED COUNTY ORDERS OR SCRIP.
Speculation by county officers, §36-1-13.

DISCOUNTING BONDS.
Downtown development authorities, §36-42-10.
Local bonds, §36-82-1.
Resource recovery development authorities, §36-63-9.
Tax allocation bonds.
Redevelopment powers of municipalities, §36-44-14.
Urban residential finance authorities for large municipalities, §36-41-8.

DISCOVERY.
Computers or other electronic devices.
Electronic communication records.
Identity fraud.
Compelling production, §35-3-4.1.
Sexual offenses against minors.
Compelling production, §35-3-4.1.
Electronic communication records.
Identity fraud.
Compelling production, §35-3-4.1.
Sexual offenses against minors.
Compelling production, §35-3-4.1.
Identity fraud.
Computers or electronic devices.
Compelling production of electronic communication records, §35-3-4.1.

DISCOVERY —Cont'd
Sexual offenses against minors.
Computers or electronic devices.
Compelling production of electronic communication records, §35-3-4.1.

DISCRIMINATION.
Cable television.
Consumer choice for television act.
Discrimination against residential subscribers, §36-76-11.

DISINTERMENT.
Land development on cemeteries or burial grounds.
Proposal for mitigation or avoidance of effects of planned activity, §§36-72-5, 36-72-7 to 36-72-9, 36-72-15.

DISPATCHERS.
Basic training course for communications officers, §35-8-23.
Public safety training center.
Administration and coordination of training, §35-5-5.

DISTRICT ATTORNEYS.
Bureau of investigation.
Investigation of criminal matters.
Requests for, §35-3-13.

DISTRICTS.
City business improvement districts.
General provisions, §§36-43-1 to 36-43-9.
Local government.
City business improvement districts.
General provisions, §§36-43-1 to 36-43-9.
Militia, §§36-2-1 to 36-2-4.
Municipal corporations.
City business improvement districts.
General provisions, §§36-43-1 to 36-43-9.

DNA.
Persons convicted of felony offenses, §§35-3-160 to 35-3-165.
Collection of samples.
Immunity from civil liability.
Persons authorized to collect, §35-3-161.
Obtaining without authority, §35-3-164.
Persons authorized to collect, §35-3-161.

DNA —Cont'd
Persons convicted of felony offenses —Cont'd
Collection of samples —Cont'd
Procedures published in division quality manuals, §35-3-161.
Responsibility, §35-3-160.
Comparison of DNA profiles from suspects in criminal investigations.
Request of prosecutor or law enforcement agency, §35-3-163.
Condition of probation.
Withdrawal of sample as condition of, §35-3-161.
Contracts to perform analysis services, §35-3-160.
Data base of profiles of samples of unknown persons, §35-3-163.
Definitions, §35-3-160.
DNA data bank.
Expungement of profile.
Reversal and dismissal of conviction, §35-3-165.
Storage and maintenance of profiles, §35-3-160.
Expungement of profile from data bank.
Reversal and dismissal of conviction, §35-3-165.
Immunity from civil liability.
Persons authorized to collect, §35-3-161.
Performance of analysis.
Division of forensic sciences, §35-3-160.
Procedures for analysis and storage, §35-3-162.
Procedures for collection and transfer of samples.
Publication in quality manuals by forensic sciences division, §35-3-161.
Receipt of samples, classification and filing, §35-3-163.
Required to give sample, §35-3-160.
Results of analysis and comparison of identification characteristics.
Making information available, §35-3-163.
Samples obtained in good faith.
Use, §35-3-165.
Search and comparative analysis of profiles, §35-3-163.
Storage of profiles, §35-3-160.

DNA —Cont'd
Persons convicted of felony offenses —Cont'd
Storage of samples.
Procedures, §35-3-162.
Time for withdrawal of samples, §35-3-161.
Unlawful dissemination of information, §35-3-164.
Persons convicted of felony offenses (eff 1/1/2013), §§35-3-160 to 35-3-165.
Collection of samples.
Immunity from civil liability.
Persons authorized to collection, §35-3-161.
Methods of obtaining, §35-3-160.
Obtaining without authority, §35-3-164.
Persons authorized, §35-3-161.
Procedure for withdrawal, §35-3-161.
Responsibility, §35-3-160.
Comparison of profiles, §35-3-163.
Definitions, §35-3-160.
DNA data bank.
Dissemination of information to law enforcement, §35-3-163.
Expungement of profile.
Reversal and dismissal of conviction, §35-3-165.
Remainder of sample submitted for analysis.
Storage in, §35-3-162.
Storage and maintenance of profiles, §35-3-160.
Expungement of profile from data bank.
Reversal and dismissal of conviction, §35-3-165.
Immunity from civil liability.
Persons authorized to collection of samples, §35-3-161.
Methods of obtaining sample, §35-3-160.
Obtaining sample without authority, §35-3-164.
Performance of analysis.
Forensic sciences division, §35-3-160.
Persons authorized to collect samples, §35-3-161.
Procedure for withdrawal of samples, §35-3-161.
DNA —Cont'd
Persons convicted of felony offenses (eff 1/1/2013) —Cont'd
Procedures for analysis and storage, §35-3-162.
Profiles of unknown persons.
Separate statistical data base, §35-3-163.
Quality manuals.
Procedures for collection and transfer of samples.
Publication by division, §35-3-161.
Remainder of sample submitted for analysis.
Storage, §35-3-162.
Use, restrictions, §35-3-162.
Report of results of analysis, §35-3-162.
Required to give sample, §35-3-160.
Results of analysis.
Making information available to law enforcement, §35-3-163.
Report, confidentiality, §35-3-162.
Reversal and dismissal of conviction.
Expungement of profile from data bank, §35-3-165.
Samples obtained in good faith.
Use, §35-3-165.
Search and comparative analysis, §35-3-163.
Separate statistical data base.
Profiles of unknown persons, §35-3-163.
Storage of profiles, §35-3-160.
Storage of samples.
Procedures, §35-3-162.
Suspects in criminal investigation.
Comparison of profile, §35-3-163.
Time for withdrawal of samples, §35-3-161.
Unlawful dissemination of information, §35-3-164.

DOGS.
Police dogs.
Certification of peace officers.
Applicants possessing special skills in training and handling of police dogs, §35-8-8.

DONATIONS.
Cemeteries.
Municipal corporations.
Funds donated to cemetery.
Municipal corporation as trustee of, §36-37-5.

DONATIONS —Cont'd
Criminal justice coordinating council.
Property.
Acceptance and use of donations, §35-6A-9.
Municipal corporations.
Acceptance of donations, §36-37-2.
Trustees for donated or gifted property.
Authority of municipal corporations to serve as, §36-37-3.
Police academy.
Property.
Acceptance of donations by board, §35-4-5.
Public safety training center.
Board of public safety.
Acceptance of donations, §35-5-3.

DOPPLER PRINCIPLE.
Speed detection devices.
Defined as using, §35-8-2.

DOWNTOWN DEVELOPMENT AUTHORITIES, §§36-42-1 to 36-42-16.
Bond issues.
Bond anticipation notes, §36-42-11.
Georgia uniform securities act of 2008.
Applicability, §36-42-15.
Proceeds.
Use, §36-42-11.
Public debt.
Obligations of authorities not to constitute, §36-42-12.
Revenue bonds, §§36-42-9, 36-42-10.
Powers of authorities, §36-42-8.
Tax exemption, §36-42-13.
Citation of act.
Short title, §36-42-1.
Conflict of laws.
Effect of provisions on other public authorities, §36-42-14.
Conflicts of interest.
Directors, §36-62A-1.
Constitutional authority for enactment of provisions, §36-42-13.
Creation, §36-42-4.
Definitions, §36-42-3.
Department of community affairs.
Resolution activating authority.
Comments on, §36-42-5.
Directors, §36-42-4.
Conflict of interest, §36-62A-1.

DOWNTOWN DEVELOPMENT AUTHORITIES —Cont'd
Directors —Cont'd
Ethics, §36-62A-1.
Officers, §36-42-7.
Qualifications, §36-42-7.
Training on development and redevelopment programs.
Exception to required training for directors of downtown development authorities, §36-62A-22.
Districts.
Special districts authorized, §36-42-16.
Ethics.
Directors, §36-62A-1.
Governing body of municipality.
Resolution activating authority, §§36-42-5, 36-42-6.
Interest.
Revenue bonds, §36-42-10.
Interpretation and construction.
Liberal construction of provisions, §36-42-15.
Legislative declaration, §36-42-2.
Powers, §36-42-8.
Public debt.
Obligations of authorities not to constitute, §36-42-12.
Purpose of provisions, §36-42-2.
Resolution activating authority, §36-42-5.
Action by resolution subsequent to passage of, §36-42-6.
Securities.
Applicability of Georgia uniform securities act of 2008, §36-42-15.
Special districts.
Creation authorized, §36-42-16.
Taxation.
Exemptions, §36-42-13.
Special districts.
Levy of taxes or assessments, §36-42-16.
Title of act.
Short title, §36-42-1.

DOWNTOWN DEVELOPMENT AUTHORITIES LAW.
General provisions, §§36-42-1 to 36-42-16.
Short title, §36-42-1.

DRUG DETECTION DOGS.
Department of public safety.
Motor carrier compliance division.
Use of drug detection dogs, §35-2-101.

DRUG DETECTION DOGS —Cont'd
Department of public safety —Cont'd
Motor carrier compliance enforcement division.
Use of drug detection dogs, §35-2-101.

DRUG PARAPHERNALIA.
Drug related objects.
Municipal court jurisdiction over cases involving drug object transactions, §36-32-6.1.

DRUG RELATED OBJECTS.
Municipal court jurisdiction over cases involving drug object transactions, §36-32-6.1.

DRUGS.
Bureau of investigation.
Narcotic agents, §35-3-9.
Drug related objects.
Municipal court jurisdiction over cases involving drug object transactions, §36-32-6.1.
Municipal courts.
Drug object transactions, jurisdiction of cases involving, §36-32-6.1.

DUPLICATION OF GOVERNMENT SERVICES.
Local government service delivery generally, §§36-70-20 to 36-70-28.

E

EASEMENTS.
Municipal corporations.
Property used for recreational purposes.
Sale, exchange, lease or grant by certain municipalities, §36-37-6.1.

ELDERLY PERSONS.
Criminal offenses and penalties.
Disabled adults and elder persons protection act.
Bureau of investigation, investigation of offenses, §35-3-4.
Cruelty to person 65 years or older.
Bureau of investigation, investigation of offenses, §35-3-4.

ELECTIONS.
Counties.
Change or removal of county site, §§36-4-1 to 36-4-6.

ELECTIONS —Cont'd
Counties —Cont'd
County containing no municipality.
Conditions under which deemed a consolidated government, §36-68-4.
County police, §36-8-1.
County surveyors, §36-7-2.
Abolishing elected office and authorizing appointment, §36-7-2.1.
Failure of election to fill office.
Procedure on, §36-7-3.
Public safety.
Department of public safety.
Employees.
Participation in or contribution to political campaigns, §35-2-12.
Public safety and judicial facilities authorities.
Bond issues.
Resolutions and referendums.
Additional bonds.
Approval prior to issuance, §36-75-12.
New projects, bonded indebtedness for.
Required prior to issuance, §36-75-11.
Treasurers, §36-6-1.

ELECTRICAL CODES.
Counties.
Building, electrical and other codes, §§36-13-1 to 36-13-12.

ELECTRICITY.
Counties.
Building, electrical and other codes.
General provisions, §§36-13-1 to 36-13-12.
Liens.
Unpaid charges for electricity.
Limited liens, §36-60-17.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.

ELECTRONICALLY FURNISHING OBSCENE MATERIAL.
Minors, §35-3-4.1.

ELECTRONIC SECURITY SYSTEMS.
Local governments.
Installation, service, sale, etc., by locality, §36-60-12.

ELUDING POLICE OFFICERS.
Fresh pursuit.
Alabama, Florida, North Carolina, South Carolina, and Tennessee law enforcement officers.
Authority in fresh pursuit in state, §35-1-15.
High-speed police chases, §35-1-14.

E-MAIL.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Identity fraud.
Compelling production of electronic communications records, §35-3-4.1.

EMBLEMS.
Bureau of investigation nomenclature act, §§35-3-100 to 35-3-108.
Public safety nomenclature act, §§35-2-80 to 35-2-88.

EMERGENCIES.
Interpretation and construction.
Mutual aid, §§36-69-8, 36-69-9.
Law enforcement officers.
Liability of officers performing duties at scene of emergency, §35-1-7.
Mutual aid, §§36-69-1 to 36-69-10.
Agreements.
Out-of-state agreements, §36-69-3.1.
Applicability of provisions.
Exceptions, §36-69-10.
Citation of act.
Short title, §36-69-1.
Definition of local emergency, §36-69-2.
Employees rendering aid.
Benefits.
Applicability, §36-69-6.
Compensation.
Responsibility for, §36-69-5.
Duties, §36-69-4.
Exemptions.
Applicability, §36-69-6.
Expenses.
Responsibility for, §36-69-5.
Liability for acts or omissions of, §36-69-7.
Powers, §36-69-4.
Privileges and immunities.
Applicability, §36-69-6.
Exceptions to provisions, §36-69-10.
Interpretation and construction, §§36-69-8, 36-69-9.

EMERGENCIES —Cont'd
Mutual aid —Cont'd
Law enforcement agencies or fire departments.
Extraterritorial cooperation and assistance, operations commander, §36-69-3.
Liability for acts or omissions of responding agency.
Employees, §36-69-7.
Out-of-state contracts and agreements, §36-69-3.1.
Title of act.
Short title, §36-69-1.
Public works.
Local government bidding and contracting.
Exceptions to requirements, §36-91-22.

EMERGENCY MANAGEMENT.
Dispatch centers, §36-60-19.
Traffic control.
Volunteers directing traffic in emergencies, §35-1-11.

EMERGENCY MEDICAL SERVICES.
Dispatch centers, §36-60-19.
Training.
Public safety training center, §§35-5-1 to 35-5-7.
Technical college system.
Training classes for emergency medical personnel.
Authority to offer, §35-5-6.

EMERGENCY MEDICAL TECHNICIANS.
Training.
Public safety training center, §§35-5-1 to 35-5-7.

EMINENT DOMAIN.
Annexation.
County owned property or facilities.
Acquisition by municipality, §36-36-7.
Effect of annexation, §36-36-7.
County and municipal development authorities.
Not authorized to exercise power, §36-62-6.
Development authorities.
County and municipal development authorities.
Not authorized to exercise power, §36-62-6.

EMINENT DOMAIN —Cont'd
Home rule for counties and municipalities.
Municipal home rule.
Limitation on powers, §36-35-6.
Municipal home rule.
Limitations on home rule powers, §36-35-6.
Public safety and judicial facilities authorities.
Power to exercise, §36-75-7.
Redevelopment.
Tax allocation districts.
Exercise of powers, §36-44-6.
Urban redevelopment.
Powers of municipalities and counties, §36-61-9.
Special masters.
Annexation authority to set fair market value, §36-36-7.
Urban redevelopment.
Requirements to exercise power, §36-61-3.1.
Urban residential finance authorities.
Authorities not to have power, §36-41-5.
Water storage facilities.
Local authorities or local governing authorities, §36-91-101.

EMOLUMENTS.
State police.
Uniform division.
Prohibited emoluments, §35-2-53.

EMPLOYEES' RETIREMENT SYSTEM OF GEORGIA.
Bureau of investigation.
Participation by personnel and director in system, §35-3-10.

EMS AND FIRE DEPARTMENTS.
Emergencies.
Mutual aid.
Employees rendering aid, §§36-69-4 to 36-69-7.

ENCAMPMENTS.
Veterans organizations.
Urban redevelopment areas.
Disposal of property in, §36-61-10.

ENGLISH LANGUAGE.
Municipal corporations.
Signs for privately owned businesses.
Use of language other than English not to be restricted, §36-35-6.1.

ENGLISH LANGUAGE —Cont'd
Signs.
Privately owned businesses.
Municipalities prohibited from restricting use of language other than English, §36-35-6.1.

ENTERPRISE ZONE EMPLOYMENT, §§36-88-1 to 36-88-10.
Available incentives.
Tax incentives, §36-88-9.
Criteria for zones, §36-88-6.
Definitions, §36-88-3.
Designation of zones, §36-88-5.
Effect on zone by local ordinances, §36-88-7.
Exemptions from taxation, §36-88-8.
Other tax incentives, §36-88-9.
Geographic zone designation, §36-88-5.
Incentives, §§36-88-4, 36-88-9.
Intention of legislature, §36-88-2.
Legislative findings, §36-88-2.
Local ordinances, §36-88-7.
Period of zone designation, §36-88-10.
Qualifying business, §36-88-4.
Required criteria, §36-88-6.
Short title, §36-88-1.
Tax exemptions, §36-88-8.
Other tax incentives, §36-88-9.
Time limitations, §36-88-10.
Title of act, §36-88-1.

ENTICING CHILD FOR INDECENT PURPOSES.
Computer on-line service or internet service.
Soliciting, seducing, luring or enticing child, §35-3-4.1.

ENVIRONMENTAL PROTECTION.
Planning.
Coordinated and comprehensive planning by counties and municipalities, §§36-70-1 to 36-70-5.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.

ESCORT SERVICES.
State police.
Uniform division.
Duties in connection with collegiate athletic events, §35-2-33.

ETHICS IN GOVERNMENT.
Zoning.
Conflicts of interest, §§36-67A-1 to 36-67A-6.

EVIDENCE.
County surveyors.
Surveys or plats.
When deemed presumptive evidence of facts, §36-7-12.
Division of forensic sciences reports.
Methods and findings of examination or analysis.
Prima-facie evidence, §35-3-154.1.
DNA sampling, analysis, collection.
Persons convicted of felony offenses, §§35-3-160 to 35-3-165.
Identity fraud.
Compelling production of electronic communication records, §35-3-4.1.
Sexual offenses.
Compelling production of electronic communication records.
Offenses against minors.
Use of computers or electronic devices, §35-3-4.1.
State crime laboratory reports.
Methods and findings of examination or analysis.
Prima-facie evidence, §35-3-154.1.

EVIDENCE (EFF 1/1/2013).
DNA sampling, collection, analysis.
Persons convicted of felony offenses, §§35-3-160 to 35-3-165.

EXECUTIONS.
County surveyors.
Fees, §36-7-11.
County treasurers.
Failure to pay over money.
Execution against treasurer, §36-6-27.
Highways, roads and streets.
Municipal street improvements.
Unpaid assessments or interest, §§36-39-21, 36-39-22.
Municipal corporations.
Exemption of municipal property, §36-33-6.

EXEMPTIONS FROM LEVY AND SALE.
Municipal corporations.
Property of municipal corporations, §36-33-6.

EXEMPTIONS FROM LEVY AND SALE —Cont'd
Redevelopment.
Urban redevelopment.
Property of municipality or county, §36-61-14.

EXPERT WITNESSES.
Development impact fees.
System improvement costs.
Defined as witness fees, §36-71-2.
Fees.
Development impact fees.
System improvement costs, §36-71-2.

EXPLOSIVE ORDINANCE DISPOSAL TECHNICIANS.
Training and certification, §35-8-25.

EXPLOSIVES AND EXPLOSIONS.
Law enforcement officers.
Training and certification, §35-8-25.
Traffic control.
Volunteers directing traffic in emergencies, §35-1-11.

EXPUNGEMENT OF RECORDS.
DNA analysis of persons convicted of felony offenses.
Reversal and dismissal of conviction.
Expungement of profile from data bank, §35-3-165.
DNA analysis of persons convicted of felony offenses (eff 1/1/2013).
Reversal and dismissal of conviction.
Expungement of profile from data bank, §35-3-165.
Misleading, inaccurate, etc., records may be expunged, §35-3-37.

EXTRATERRITORIAL COOPERATION AND ASSISTANCE TO LAW ENFORCEMENT AGENCIES AND FIRE DEPARTMENTS.
Emergencies.
Mutual aid, §36-9-3.

F

FAIRS.
Municipal corporations.
Lease of property to nonprofit corporations.
Operation and management of fairgrounds, §36-37-6.

FAIRS —Cont'd
Municipal corporations —Cont'd
Powers of municipal corporations.
Acquisition, operation, etc., of certain buildings, facilities, etc., §36-34-3.

FAMILY FARMS.
Private well supplying water.
Grounds for requiring connection to public water system, §36-60-17.1.

FAMILY VIOLENCE.
Law enforcement officers.
Training methods for identifying, combating and reporting.
Establishment of guidelines and procedures, use by law enforcement training centers, §35-1-10.
Peace officer standards and training council.
Training guidelines and procedures, establishment, use by law enforcement training centers, §35-1-10.

FEDERAL WORK AUTHORIZATION PROGRAM.
Private employers.
Registration with, utilization, requirement, §36-60-6.
Business license or document required to operate business.
Evidence of authorization to use, §36-60-6.

FEDERATION OF REGIONAL ACCREDITING COMMISSIONS OF HIGHER EDUCATION.
Georgia bureau of investigation.
Degrees of certificates from accredited member.
Incentive pay to members of bureau who obtain degrees or certificates, §35-2-42.

FEES.
Cable television.
Consumer choice for television act.
Franchise fees, §36-76-6.
State franchise application fee, §36-76-4.

FEES —Cont'd
Cemeteries.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located.
Permit.
Application fee, §36-72-10.
Counties.
County treasurers, §§36-6-12, 36-6-13.
Payment of certain fees in county treasury, §36-1-9.
County surveyors, §36-7-9.
Execution for fees, §36-7-11.
Payment of fees, §36-7-10.
County treasurers, §36-6-12.
Road contracts.
Commission or fees in connection with, §36-6-13.
Crime information center.
Inspection of criminal records, §§35-3-37, 35-3-37.
Development impact fees.
General provisions, §§36-71-1 to 36-71-13.
Expert witnesses.
Development impact fees.
System improvement costs, §36-71-2.
Interlocal risk management agencies.
Exemption from fees, §36-85-13.
Probate courts.
Judges.
County historical containers.
Filing of documents, §36-16-4.

FELONIES.
DNA sampling, collection, analysis.
Persons convicted of felony offenses.
Generally, §§35-3-160 to 35-3-165.
Obtaining sample without authority, §35-3-164.
Persons convicted of felony offenses (eff 1/1/2013).
Generally, §§35-3-160 to 35-3-165.
Obtaining sample without authority, §35-3-164.
Nomenclature of municipal and county police departments, §35-10-10.
Public safety nomenclature act.
Violation of, §35-2-88.

FILM.
Child sexual exploitation, §35-3-4.1.
Computer or electronic pornography and child exploitation, §35-3-4.1.

FINES.
Bureau of investigation nomenclature act.
Civil penalties, §35-3-106.
Cemeteries.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located.
Violations of provisions, §36-72-16.
Counties.
Unincorporated areas of counties.
Ordinances for governing and policing.
Maximum punishments, §36-1-20.
Crime information center.
Prohibited acts, §35-3-38.
Emblems and insignia.
Public safety nomenclature act, §35-2-86.
Municipal courts.
Imposition of fines, §36-32-5.
Retention of fines and forfeitures by municipalities.
Alcoholic beverages.
Furnishing to or purchase and possession by persons under 21 years of age, §36-32-10.
Criminal trespass.
Jurisdiction to try violation, §36-32-10.1.
Marijuana possession cases, §36-32-6.
Motor vehicles.
Operation without certificate of emission inspection, §36-32-8.
Operation without effective insurance, §36-32-7.
Shoplifting, misdemeanor theft by, §36-32-9.
Shoplifting of $300 or less, §36-32-9.
Municipal home rule.
Limitations on home rule powers, §36-35-6.
Nomenclature of municipal and county police departments, §35-10-10.
Civil penalties, §35-10-8.
State patrol.
Payment and distribution of fines, §35-2-53.

FINGERPRINTS.
Crime information center.
Submission of identifying data to center by state criminal justice agencies, §35-3-36.
Law enforcement officers.
Criminal record investigation.
Fingerprinted to determine existence of criminal record.
Requirements for employment or certification, §35-8-8.

FIRE ALARMS.
Local governments.
Installation, service, sale, etc., by locality, §36-60-12.

FIRE DEPARTMENTS.
Criminal history background checks.
Information from crime information center, §35-3-33.
Dispatch centers.
Training for communications officers, §36-60-19.
Extraterritorial cooperation and assistance.
Local departments, commander of operations, §36-69-3.

FIREFIGHTERS.
Obedience to authorized persons directing traffic.
Volunteers directing traffic in emergencies, §35-1-11.
Public safety training center.
General provisions, §§35-5-1 to 35-5-7.
Training.
Public safety training center, §§35-5-1 to 35-5-7.
Volunteer firefighters.
Counties and municipalities, §36-60-23.

FIRE INSURANCE.
Counties.
Books of laws and court reports, §36-9-4.

FIREPROOFING.
County codes, §36-13-1.
County record vaults, §36-9-5.

FIRE PROTECTION AND SAFETY.
Local fire departments.
Municipal control of county fire stations, §36-31-11.1.

FIRES.
Building codes.
County building, electrical and other codes, §§36-13-1 to 36-13-12.
Bureau of investigation.
Investigation of crime related fires.
Requests by heads of fire department, §35-3-13.
Counties.
Building, electrical and other codes, §§36-13-1 to 36-13-12.
Emergencies.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.
Traffic control.
Volunteers directing traffic in emergencies, §35-1-11.

FIREWORKS.
Counties or municipal corporations.
Prohibiting sale or services.
Restrictions, §36-60-24.

FIRST AID.
Department of public safety, §35-2-49.

FISCAL YEAR.
Local government.
Budgets and audits.
Establishment of fiscal year, §36-81-3.

FLEEING OR ATTEMPTING TO ELUDE POLICE OFFICERS.
Fresh pursuit.
Alabama, Florida, North Carolina, South Carolina, and Tennessee law enforcement officers.
Authority in fresh pursuit in state, §35-1-15.
High-speed police chases, §35-1-14.

FLORIDA.
Law enforcement officers.
Fresh pursuit.
Authority of officers in fresh pursuit in state, §35-1-15.

FORENSIC SCIENCES DIVISION, §§35-3-150 to 35-3-155.
Administrative procedure act, §35-3-155.
Appointment of chief medical examiner, §35-3-153.
Appointment of director, §35-3-152.
Chief medical examiner, §35-3-153.
Definitions, §35-3-150.

FORENSIC SCIENCES DIVISION —Cont'd
Director, §35-3-152.
DNA sampling, collection, analysis.
Persons convicted of felonies.
Generally, §§35-3-160 to 35-3-165.
Performance of analysis, §35-3-160.
Procedures for collection and transfer of samples.
Publication in quality manuals, §35-3-161.
Persons convicted of felonies (eff 1/1/2013).
Generally, §§35-3-160 to 35-3-165.
Performance of analysis, §35-3-160.
Procedures for collection and transfer of samples, §35-3-161.
Duties, §35-3-151.
Evidence.
Administrative procedure act, §35-3-155.
Report of methods and findings of examination or analysis.
Prima-facie evidence of facts contained, service on defendant, objection by defendant, §35-3-154.1.
Requirements of division, §35-3-154.
Responsibilities, §35-3-151.
Standards and procedures, §35-3-154.

FORMS.
County surveyors.
Oath of office, §36-7-5.
County treasurers.
Oath of office, §36-6-3.

FORTUNETELLING.
Counties.
Powers of county governing authority as to, §36-1-15.

FRANCHISES.
Cable television.
Competition among providers, §§36-90-1 to 36-90-8.
Consumer choice for television act, §§36-76-1 to 36-76-11.
County regulation.
Provisions not to be construed to impair franchises, §36-18-4.
Restrictions on authority of counties and municipalities, §36-18-3.
Expedited franchising of cable and video services, §§36-76-1 to 36-76-11.

FRANCHISES —Cont'd
Municipal corporations.
Public utilities.
Powers to grant franchises, §36-34-2.

FRAUD AND DECEIT.
Police departments.
Nomenclature of municipal and county police departments generally, §§35-10-1 to 35-10-11.
Real property.
Investigation of fraudulent real estate transactions.
Subpoena authority, §35-3-4.2.

FRESH PURSUIT.
Law enforcement officers.
Officers from Alabama, Florida, North Carolina, South Carolina, or Tennessee.
Authority of officers in fresh pursuit in state, §35-1-15.

FRONTAGE.
Highways, roads and streets, §36-39-4.

FUGITIVES.
State patrol.
Duty to apprehend, §35-2-33.

FUNERAL EXPENSES.
Counties.
Indigent persons.
Interment of deceased indigents, §36-12-5.

G

GARBAGE AND TRASH.
Counties.
Transporting across county or state boundaries for dumping.
Permission required, §36-1-16.

GAS.
Counties.
Building, electrical and other codes.
General provisions, §§36-13-1 to 36-13-12.
Liens.
Unpaid charges for gas service.
Limited liens, §36-60-17.

GENEALOGISTS.
Abandoned cemeteries and burial grounds.
Application for permit, §36-72-5.

GENEALOGISTS —Cont'd
Defined, §36-72-2.

GENERAL ASSEMBLY.
House of representatives.
Speaker.
Local government finances report and local independent authority indebtedness report.
Department of community affairs to file with speaker, §36-81-8.
Security guards.
Employment of sufficient number for protection, §35-2-73.
Senate.
President.
Local government finances reports and local independent authority indebtedness reports.
Department of community affairs to file with president, §36-81-8.

GENETIC TESTING.
DNA sampling, collection, analysis.
Persons convicted of felony offenses, §§35-3-160 to 35-3-165.
Persons convicted of felony offenses (eff 1/1/2013), §§35-3-160 to 35-3-165.

GENITALS.
Electronically furnishing obscene materials to minors, §35-3-4.1.
Sexual conduct.
Defined, §36-60-3.

GEORGIA ALLOCATION SYSTEM.
General provisions.
Private activity bonds, §§36-82-180 to 36-82-202.
Short title, §36-82-180.

GEORGIA ASSOCIATION OF CHIEFS OF POLICE.
Training requirements for police chiefs.
Generally, §35-8-20.

GEORGIA BUREAU OF INVESTIGATION, §§35-3-1 to 35-3-13.
Agents.
Badges.
Disability in line of duty.
Retention of badge and weapon, §35-3-11.
Disability in line of duty.
Retention of badge and weapon, §35-3-11.

GEORGIA BUREAU OF INVESTIGATION —Cont'd
Agents —Cont'd
Injury in line of duty.
Medical and surgical expenses, §35-3-12.
Narcotic agents, §35-3-9.
Personnel board.
Applicability of rules of board, §35-3-11.
Powers, §35-3-8.
Narcotic agents, §35-3-9.
State personnel administration.
Applicability to agents, §35-3-11.
Weapons.
Disability in line of duty.
Retention of badge and weapon, §35-3-11.
Agreements for provision of services and material.
Director or commissioner, §35-3-7.
Alert systems for emergency notifications.
Missing disabled adults, §§35-3-170 to 35-3-180.
Unapprehended murder or rape suspects.
Kimberly's call, §35-3-190.
Antiterrorism task force.
General provisions, §§35-3-60 to 35-3-65.
Arrest.
Powers of agents, §35-3-8.
Assistance to other law enforcement agencies.
Power of bureau, §35-3-8.1.
Creation, §35-3-2.
Crime information center.
General provisions, §§35-3-30 to 35-3-40.
Criminal justice coordinating council.
Assigned to bureau, §35-6A-2.
Definitions, §35-3-1.
Crime information center, §35-3-30.
Director of investigation, §§35-3-5, 35-3-6.
Agreements for provision of services and material, §35-3-7.
Duties, §35-3-5.
Employees' retirement system.
Participation in, §35-3-10.
Kimberly's call.
Alert system for unapprehended murder or rape suspects.
Coordinator of system, §35-3-190.

GEORGIA BUREAU OF INVESTIGATION —Cont'd
Director of investigation —Cont'd
Mattie's call act.
Alert system for missing disabled adults.
Activation of alert system, §35-3-176.
Coordinator of system, §35-3-173.
District attorneys.
Investigation of criminal matters.
Requests for, §35-3-13.
Division of forensic sciences, §§35-3-150 to 35-3-155.
Divisions, §35-3-3.
DNA sampling, collection, analysis.
Persons convicted of felonies.
DNA data bank.
Storage of identification characteristics of profile, §35-3-160.
Generally, §§35-3-160 to 35-3-165.
Persons convicted of felonies (eff 1/1/2013).
DNA data bank.
Storage of profiles, §35-3-160.
Generally, §§35-3-160 to 35-3-165.
Drugs.
Narcotic agents, §35-3-9.
Duties, §35-3-4.
Employees' retirement system.
Participation by personnel and director in system, §35-3-10.
Fires.
Investigation of crime related fires.
Requests by heads of fire department, §35-3-13.
Forensic sciences division, §35-3-13.
Injuries to members in line of duty.
Medical and surgical expenses, §35-3-12.
Kimberly's call.
Statewide alert system for unapprehended murder or rape suspects determined to be serious public threats, §35-3-190.
Mattie's call act.
Statewide alert system for missing disabled adults, §§35-3-170 to 35-3-180.
Missing children information center.
General provisions, §§35-3-80 to 35-3-85.
Narcotic agents, §35-3-9.
Powers, §35-3-4.
Assistance to other law enforcement agencies, §35-3-8.1.

GEORGIA BUREAU OF INVESTIGATION —Cont'd
Radio wavelength.
Unauthorized use, §35-1-5.
Searches and seizures.
Powers of agents, §35-3-8.
State personnel administration.
Agents.
Applicability to, §35-3-11.
Director of investigation.
Classification in system, §35-3-6.
State personnel board.
Director of investigation.
Classification in system, §35-3-6.
Status, §35-3-2.
Trafficking of persons for labor or sexual servitude.
Duty to investigate violations, §35-3-4.
Subpoena power for investigating violations, §35-3-4.3.
Weapons.
Powers of agents to carry firearms, §35-3-8.

GEORGIA BUREAU OF INVESTIGATION NOMENCLATURE ACT.
General provisions, §§35-3-100 to 35-3-108.
Short title, §35-3-100.

GEORGIA COUNTY LEADERSHIP ACT.
General provisions, §§36-20-1 to 36-20-9.
Short title, §36-20-1.

GEORGIA CRIME INFORMATION CENTER.
General provisions, §§35-3-30 to 35-3-40.

GEORGIA DEVELOPMENT IMPACT FEE ACT.
General provisions, §§36-71-1 to 36-71-13.
Short title, §36-71-1.

GEORGIA FIREFIGHTERS' PENSION FUND.
Contributions.
County and municipality volunteer firefighters, §36-60-23.
Volunteer firefighters.
Contributions from counties and municipalities, §36-60-23.

GEORGIA FORENSIC SCIENCES ACT, §§35-3-150 to 35-3-155.

GEORGIA LOCAL GOVERNMENT PUBLIC WORKS CONSTRUCTION LAW.
Local government bidding and contracting.
General provisions, §§36-91-1 to 36-91-95.
Short title, §36-91-1.

GEORGIA MUNICIPAL COURTS TRAINING COUNCIL ACT.
General provisions, §§36-32-20 to 36-32-27.
Short title, §36-32-20.

GEORGIA MUNICIPAL TRAINING ACT.
General provisions, §§36-45-1 to 36-45-9.
Short title, §36-45-1.

GEORGIA MUTUAL AID ACT.
General provisions, §§36-69-1 to 36-69-10.
Short title, §36-69-1.

GEORGIA PEACE OFFICER STANDARDS AND TRAINING ACT.
General provisions, §§35-8-1 to 35-8-26.
Short title, §35-8-1.

GEORGIA POLICE ACADEMY ACT.
General provisions, §§35-4-1 to 35-4-9.
Short title, §35-4-1.

GEORGIA PRISON WARDENS ASSOCIATION.
Training requirements for wardens.
Generally, §35-8-20.

GEORGIA PUBLIC SAFETY TRAINING CENTER ACT.
General provisions, §§35-5-1 to 35-5-7.
Short title, §35-5-1.

GEORGIA STATE PATROL.
General provisions, §§35-2-30 to 35-2-58.

GIFTED.
Qualified housing sponsor.
Defined as including special early-admission policy for gifted high school students, §36-41-3.

GIFTED —Cont'd
Trustees for donated or gifted property, §36-37-3.

GIFTS.
Criminal justice coordinating council.
Acceptance and use, §35-6A-9.
Municipal corporations.
Acceptance of donations or gifts, §36-37-2.
Public purposes.
Authorization of devises, gifts and grants for, §36-37-1.
Trustees for donated or gifted property.
Authority of municipal corporations to serve as, §36-37-3.
Parks and recreation.
County and municipal recreation systems.
Acceptance of gifts, §36-64-6.
Police academy.
Acceptance by board, §35-4-5.
Public safety and judicial facilities authorities.
Power to accept, §36-75-7.
Public safety training center.
Acceptance by board of public safety, §35-5-3.

GOLF COURSES.
Municipal acquisition and operation of certain facilities, §36-34-3.
Municipal property used for recreational purposes, §36-37-6.1.

GOOD FAITH.
Annexation.
Arbitration of annexation disputes.
Good faith negotiations, §36-36-119.
County treasurers.
Bonds, surety.
Recordation of bond necessary to bind third parties without notice, §36-6-6.
DNA analysis of persons convicted of felony offenses.
Samples obtained in good faith.
Use, §35-3-165.
DNA analysis of persons convicted of felony offenses (eff 1/1/2013).
Samples obtained in good faith.
Use, §35-3-165.
Municipal corporations.
Governing bodies.
Discretion in management and disposition of property, §36-30-2.

GOOD FAITH —Cont'd
Public works contracts.
Letting of contracts, §§36-10-2.1, 36-10-2.2.

GOOD SAMARITANS.
Law enforcement officers.
Emergencies.
Performing duties at scene of emergency, §35-1-7.

GOVERNMENTAL COMMERCIAL PAPER NOTES, §§36-82-240, 36-82-241.

GOVERNOR.
Appointments.
Board of public safety, §35-2-1.
Public safety.
Board of public safety, §35-2-1.
Commission of public safety, §35-2-3.
Municipal corporations.
New municipal corporation created by local act.
Appointment of interim representatives, §36-31-8.
Police.
Special policemen.
General provisions, §§35-9-1 to 35-9-15.
Special policemen.
General provisions, §§35-9-1 to 35-9-15.

GRADUATION.
Urban residential finance authorities.
Qualified housing sponsor defined, §36-41-3.

GRAND JURY.
Counties.
Boundaries.
Change of boundaries.
Proceedings before grand jury, §36-3-2.
Settlement of boundary disputes.
Presentment of dispute by grand jury, §36-3-20.
Receipts and disbursements.
Submission of sworn returns to grand jury by certain county officers, §36-1-7.
County historical containers.
Majority vote of two successive regular grand juries required, §36-16-5.

GRANDSTANDS.
Local government and political subdivisions.
Undertaking defined, §36-82-61.
Municipal corporations.
Power to acquire certain buildings and facilities, §36-34-3.

GRANTS.
Counties.
Grants of state funds.
General provisions, §§36-17-1 to 36-17-25.
Local governmental efficiency grant program, §36-86-4.
Municipal corporations.
Grants of state funds.
General provisions, §§36-40-1 to 36-40-46.

GRATES.
Bicycles.
Road grates to accommodate bicycles.
Installation by local governments, §36-60-5.

GRATUITIES.
Bond issues.
Private activity bonds.
Notice of allocation, §36-82-185.

GRAVE MARKERS.
Abandoned cemetery defined, §36-72-2.
Burial object defined, §36-72-2.

GRAVES.
Abandoned cemeteries and burial grounds.
Archeologist defined, §36-72-2.
Development of land on which cemetery located.
Application for permit, §36-72-5.
Penalty for grave site disturbance, §36-72-16.

GROUND WATER.
Environmental protection division.
Quarry water oversight duties, §36-60-22.
Quarries.
Adverse impact by quarry prohibited, §36-60-22.

GUARDS.
Police academy.
Public officer defined, §35-4-2.
Public safety.
Department of public safety.
Security guard division, §§35-2-70 to 35-2-75.

GUTTERS.
Roadways.
Charges for road improvements, §36-39-4.

H

HANDGUNS.
Crime information center.
Notification to dealer of individual's prohibition on purchasing or possession handguns.
Hospitalization records to be provided, §35-3-37.

HANDICAPPED PERSONS.
Missing disabled adults.
Statewide alert system, §§35-3-170 to 35-3-180.

HARASSMENT.
Antiterrorism acts.
Purpose, §35-3-61.

HAROLD F. HOLTZ MUNICIPAL TRAINING INSTITUTE, §36-45-5.
Institute, defined, §36-45-3.

HEADQUARTERS.
Commissioner of public safety, §35-2-13.
Deputy commissioner, §35-2-13.

HEALTH INSURANCE.
County officers.
Benefits, §36-1-11.1.
Public officers and employees.
County group health insurance program, §§36-21-1 to 36-21-10.

HEARINGS.
Annexation.
Application by owners of 60 percent of land and 60 percent of electors, §36-36-36.
Arbitration panel, §§36-36-114 to 36-36-116.
Alternative dispute resolution training, §36-36-114.
Appeal, grounds for, §36-36-116.
Compensation, §36-36-115.
Composition and membership, §36-36-114.
Duties, §36-36-115.
Findings and recommendation, §36-36-115.
Meeting, §36-36-115.
Oath of office, §36-36-114.

HEARINGS —Cont'd
Annexation —Cont'd
Arbitration panel —Cont'd
Selection of members, §36-36-114.
Unappealed order, binding effect on parties, §36-36-116.
Zoning and land use training, §36-36-114.
Resolution and referendum.
Conduct to public hearing, §36-36-57.
Cable television.
Competition among providers.
Public hearings.
Holding prior to granting authorization to public provider, §36-90-3.
Cemeteries.
Abandoned cemeteries.
Permit to develop land, §36-72-7.
Fresh pursuit.
Law enforcement officers from Alabama, Florida, North Carolina, South Carolina, and Tennessee.
Duty to bring person arrested before judicial officer for hearing, §35-1-15.
Property taxes.
Regional facilities contracts, §36-73-2.
Regional facilities contracts, §36-73-2.
Zoning.
Local government taking action resulting in zoning decision, §36-66-4.

HIGH SCHOOL DIPLOMA OR EQUIVALENT.
Peace officers.
Requirements for appointment or certification, §35-8-8.

HIGH-SPEED POLICE CHASES, §35-1-14.

HIGHWAYS, ROADS AND STREETS.
County road systems.
Reopening or repairing of roads necessitated by private construction activity.
Assessments for costs.
Authority of counties having population of 550,000 or more, §36-1-18.

HIGHWAYS, ROADS AND STREETS —Cont'd
Executions.
Municipal street improvements.
Assessments.
Unpaid assessments or interest, §§36-39-21, 36-39-22.
Improvement bonds, §§36-39-25 to 36-39-27.
Interpretation and construction.
Municipal street improvements, §36-39-34.
Limitation of actions.
Municipal street improvements.
Assessments.
Actions contesting or enjoining, §36-39-24.
Municipal street improvements, §§36-39-1 to 36-39-34.
Adoption of provisions, §36-39-2.
Appraisers.
Board of appraisers, §§36-39-12 to 36-39-14.
Assessments.
Additional assessments, §36-39-18.
Basis, §36-39-4.
Collection, §36-39-23.
Execution, levy and sale on unpaid assessments or interest, §§36-39-21, 36-39-22.
Installment payment, §36-39-16.
Insufficiency.
Additional assessments, §36-39-18.
Interest, §36-39-14.
Execution, levy and sale on unpaid interest, §§36-39-21, 36-39-22.
Lien, §36-39-20.
Lien for assessment and interest, §36-39-20.
Limitation of actions.
Actions contesting or enjoining assessments, §36-39-24.
Notice of due date, §36-39-19.
Ordinance fixing.
Adoption, §36-39-14.
Petition for validation of ordinance, §§36-39-28 to 36-39-33.
Payment, §36-39-15.
Installments, §36-39-16.

HIGHWAYS, ROADS AND STREETS —Cont'd
Municipal street improvements —Cont'd
Assessments —Cont'd
Payment —Cont'd
Time for, §36-39-15.
Petition for validation of ordinance establishing assessments, §§36-39-28 to 36-39-33.
Appeal from judgment of court, §36-39-31.
Conclusiveness of final judgment, §36-39-32.
Contents, §36-39-28.
Evidence.
Entry of reference to judgment on bonds, §36-39-33.
Hearing, §§36-39-29, 36-39-30.
Judgment of court, §36-39-30.
Appeal from, §36-39-31.
Conclusiveness of final judgment, §36-39-32.
Entry of reference to judgment on bonds, §36-39-33.
Notice of hearing, §36-39-29.
Order of court, §36-39-30.
Show cause order, §36-39-29.
Time for, §36-39-28.
Portion of costs paid by municipal corporation, §36-39-17.
Special fund, §36-39-23.
Board of appraisers, §§36-39-12 to 36-39-14.
Appointment, §36-39-12.
Number appointed, §36-39-12.
Report, §36-39-13.
Filing, §36-39-13.
Hearing on, §36-39-14.
Notice, §36-39-14.
Bond issues.
Disposition of proceeds remaining after payment of contract price, §36-39-27.
Generally, §36-39-25.
Interest, §36-39-25.
Payment of contract price.
Application of proceeds to, §36-39-26.
Disposition of proceeds remaining after, §36-39-27.
Sale of bonds, §36-39-26.
Terms and conditions, §36-39-25.
Contracts.
Award, §36-39-11.

HIGHWAYS, ROADS AND STREETS —Cont'd
Municipal street improvements —Cont'd
Contracts —Cont'd
Examination of bids, §36-39-11.
Notice of contract proposals, §§36-39-8, 36-39-10.
County as owner of abutting property.
Procedure for making improvements, §36-39-5.
Definitions, §36-39-1.
Elections.
Adoption of provisions, §36-39-2.
Executions.
Assessments.
Unpaid assessments or interest, §§36-39-21, 36-39-22.
Interpretation and construction, §36-39-34.
Intersecting streets.
Frontage.
Municipal corporation deemed owner of, §36-39-4.
Payment of assessment on, §36-39-4.
Liens.
Assessment and interest, §36-39-20.
Railroad having tracks in street.
Paving.
Action by municipal corporation, §36-39-6.
Limitation of actions.
Assessments.
Actions contesting or enjoining, §36-39-24.
Notice.
Assessments.
Due date, §36-39-19.
Petition for validation of ordinance establishing assessments.
Hearing, §36-39-29.
Board of appraisers.
Report.
Hearing, §36-39-14.
Contract proposals, §§36-39-8, 36-39-10.
Ordinances.
Power of governing body, §36-39-7.
Performance of work by municipal corporation.
Contents of resolution, §36-39-9.
Objections by property owners, §36-39-9.

HIGHWAYS, ROADS AND STREETS —Cont'd
Municipal street improvements —Cont'd
Petition by landowners, §36-39-3.
Assessments.
Validation of ordinance establishing, §§36-39-28 to 36-39-33.
County as owner of abutting property, §36-39-5.
Portion of costs paid by municipal corporation.
Assessment of balance, §36-39-17.
Protest or objection, §36-39-3.
Performance of work by municipal corporation, §36-39-9.
Public utilities.
Water, gas and sewer connections, §36-39-7.
Railroad having tracks in street.
Paving by.
Required, §36-39-6.
Resolution.
Adoption, §§36-39-3, 36-39-8.
Contents, §§36-39-8, 36-39-9.
Rules and regulations.
Power of governing body, §36-39-7.
Municipal street systems.
Enclosure of lanes or alleys, §36-30-11.
Grant of right to obstruct.
Prohibited, §36-30-10.
Lanes or alleys.
Enclosure, §36-30-11.
Obstruction of public streets.
Grant of right to obstruct.
Prohibited, §36-30-10.
Powers of municipality generally, §36-34-3.
Universities and colleges.
Closing of streets adjacent to or through institutions of higher learning.
Municipal corporations having population of 350,000 or more, §36-30-12.
Public utilities.
Municipal street improvements.
Water, gas and sewer connections, §36-39-7.
State patrol.
Criminal violations occurring off public roads and highways.
Inquiry into, §35-2-33.
Safety rest areas and welcome centers.
Patrolling, §35-2-32.

HISTORICAL CONTAINERS.
Counties.
General provisions, §§36-16-1 to 36-16-5.

HISTORIC PRESERVATION.
Municipal corporations.
Grants of state funds for repairs on facilities of historical value, §36-40-1.

HOLIDAYS AND OBSERVANCES.
State patrol.
Compensatory time off for members working on state holiday, §35-2-55.

HOME RULE, §§36-35-1 to 36-35-8.
Municipal home rule, §§36-35-1 to 36-35-8.
Annexation.
Deannexed property, §36-35-2.
Boundaries.
Change of boundaries.
Local act or general law, §36-35-2.
Charters.
Amendment, §36-35-3.
Effect of provisions on, §36-35-7.
Filing of amendments, §36-35-5.
Publication of amendments by secretary of state, §36-35-5.
Citation of act.
Short title, §36-35-1.
Conflict of laws.
Controlling effect of provisions, §36-35-8.
Dissolution of municipal corporation.
Local act or general law, §36-35-2.
Eminent domain.
Limitations on home rule powers, §36-35-6.
Fines.
Limitations on home rule powers, §36-35-6.
Governing authorities.
Powers, §§36-35-3, 36-35-4.
Election districts.
Reapportionment, §36-35-4.1.
Limitations, §36-35-6.
Interpretation and construction.
Limitations on home rule powers, §36-35-6.
Provisions as general law, §36-35-7.
Local or special laws.
Enactment on subject matters covered by provisions, §36-35-7.
Merger.
Local act or general law, §36-35-2.

HOME RULE —Cont'd
Municipal home rule —Cont'd
Municipal elections.
Reapportionment of election districts, §36-35-4.1.
Ordinances, §36-35-3.
Petitions.
Charters.
Amendment, §36-35-3.
Ordinances, rules and regulations.
Amendment or repeal, §36-35-3.
Prison terms.
Limitations on home rule powers, §36-35-6.
Referendum.
Charters.
Amendment, §36-35-3.
Ordinances, rules and regulations.
Amendment or repeal, §36-35-3.
Rules and regulations.
Amendment or repeal of rules, §36-35-3.
Authority to adopt rules, §36-35-3.
Title of act.
Short title, §36-35-1.

HOMES FOR THE AGED.
Employees' records checks.
Exchange of national criminal history background information, §35-3-34.2.

HOMES FOR THE MENTALLY HANDICAPPED.
Employees' records checks.
Exchange of national criminal history background information, §35-3-34.2.

HOMOSEXUALITY.
Sexual conduct.
Defined, §36-60-3.

HOSPICE CARE.
Employee records checks.
Exchange of national criminal history background information, §35-3-34.2.

HOSPITAL AUTHORITIES.
Construction contracts.
Local government bidding and contracting.
Stipulations to exceptions to requirements, §36-91-22.

HOSPITAL AUTHORITIES —Cont'd
Local government bidding and contracting.
Public works.
Stipulations to exceptions to requirements, §36-91-22.
Public works.
Local government bidding and contracting.
Stipulations to exceptions to requirements, §36-91-22.

HOSPITALS.
Local government.
Bond issues.
Excess proceeds of bonds issued to match state and federal allocations.
Use, §36-60-7.
Municipal corporations.
Power to establish facilities and services, §36-34-4.

HOUSING.
Bond issues.
Private activity bonds.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.
Counties.
Building, electrical and other codes.
General provisions, §§36-13-1 to 36-13-12.
Local government.
Urban residential finance authorities.
General provisions, §§36-41-1 to 36-41-13.
Municipal corporations.
Urban residential finance authorities.
General provisions, §§36-41-1 to 36-41-13.
Private activity bonds.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.
Urban residential finance authorities.
General provisions, §§36-41-1 to 36-41-13.

HUMAN TRAFFICKING.
Labor or sexual servitude.
Trafficking of persons for.
Bureau of investigation.
Duty to identify and investigate violations, §35-3-4.

HUMAN TRAFFICKING —Cont'd
Labor or sexual servitude —Cont'd
Trafficking of persons for —Cont'd
Bureau of investigation —Cont'd
Subpoena power for investigating violations, §35-3-4.3.
Training law enforcement officers investigating, §35-1-16.

HURRICANES.
Traffic control.
Volunteers directing traffic in emergencies, §35-1-11.

I

IDENTIFICATION CARDS.
Federal work authorization program.
Private employers.
Registration with, utilization, requirement, §36-60-6.

IDENTITY FRAUD.
Incident reports.
Preparation by law enforcement agency, §35-1-13.
Investigations.
Compelling production of electronic communications records, §35-3-4.1.
Reports.
Incident reports, §35-1-13.
Subpoenas.
Compelling production of electronic communications records, §35-3-4.1.

ILLEGAL ALIENS.
Arrest, §35-1-17.
Enforcement of immigration laws.
Cooperation with federal authorities.
State and local law enforcement, §35-1-17.
Criminal justice coordinating council.
Grants and incentive programs, duty, §35-6A-10.
Immunity.
Enforcement of immigration laws.
Law enforcement officers and government officials, §35-1-17.
Local governments.
Immigration sanctuary policies prohibited, §36-80-23.
Transporting illegal aliens to federal facilities.
State or local law enforcement, authority, §35-1-17.

IMMIGRATION.
Enforcement of immigration law in state.
Cooperation and agreements with federal authorities.
State and local law enforcement, §35-1-17.
Criminal justice coordinating council.
Grants and incentive programs, duty, §35-6A-10.
Immunity.
Law enforcement officers or government officials, §35-1-17.
Memorandum of understanding with federal agencies.
Training peace officers to enforce, §35-2-14.
Federal work authorization program to verify new employees.
Business license, other documents to operate business.
Evidence of authorization to use required, §36-60-6.
Private employers.
Registration with, utilization, requirement, §36-60-6.
Local governments.
Immigration sanctuary policies prohibited, §36-80-23.
Transporting illegal aliens to federal facilities.
State and local law enforcement, §35-1-17.

IMMUNITY.
Counties, §36-1-4.
Computer malfunction or failure, §36-60-20.
Crime information center.
Accuracy of information, §35-3-36.
Dissemination of criminal history record information, §35-3-34.
Criminal history record information.
Dissemination by state agencies or employees, §35-3-34.
DNA samples collected from persons convicted of felony offenses.
Persons authorized to collect, §35-3-161.
DNA samples collected from persons convicted of felony offenses (eff 1/1/2013).
Persons authorized to collect, §35-3-161.

IMMUNITY —Cont'd
Immigration laws.
Enforcement.
Law enforcement officers or government officials, §35-1-17.
Interlocal risk management agency.
Sovereign immunity not waived, §36-85-20.
Kimberly's call.
Immunity for dissemination of alert, §35-3-190.
Local government.
Antitrust liability, §§36-65-1, 36-65-2.
Mattie's call act.
Dissemination of alerts, §35-3-180.
Municipal corporations, §§36-33-1 to 36-33-3.
Computer malfunction or failure, §36-60-20.
Damages, §36-33-1.
Discretionary act.
No liability for failure to perform, §36-33-2.
Torts of police or other officers.
No liability for, §36-33-3.
Special policemen.
Acts or omissions of special policemen.
Immunity of state from liability, §35-9-12.

IMPACT FEES.
Development impact fees, §§36-71-1 to 36-71-13.

IMPERSONATING AN OFFICER.
Nomenclature of municipal and county police departments generally, §§35-10-1 to 35-10-11.

IMPERSONATION.
Police departments.
Nomenclature of municipal and county police departments generally, §§35-10-1 to 35-10-11.

IMPROVEMENTS.
City business improvement districts.
General provisions, §§36-43-1 to 36-43-9.
Municipal street improvements.
General provisions, §§36-39-1 to 36-39-34.

INCENTIVE PROGRAMS.
Education.
Georgia bureau of investigation.
Incentive pay to members who obtain degrees or certificates, §35-2-42.

INCENTIVE PROGRAMS —Cont'd
Education —Cont'd
State patrol.
Incentive pay, §35-2-42.

IN CHAMBERS.
County, municipality or political subdivision bonds.
Petition by district attorney or attorney general for entity seeking to issue to show cause, §36-82-21.
Proceedings for validation of revenue bonds, §36-82-75.
Criminal records.
Inaccurate or incomplete appeals of decisions denying purged, modification or supplementation, §35-3-37.
Street improvement assessments.
Hearing on petition for validation of ordinance, §36-39-29.

INDIGENT PERSONS.
Attorneys.
Municipal court criminal proceedings.
Right to counsel, §36-32-1.
Counties, §§36-12-1 to 36-12-5.
Deceased indigents.
Interment, §36-12-5.
Eligibility for benefits, §36-12-2.
Liability of person sending pauper to county for support purposes, §36-12-4.
Relatives.
Duty to support paupers, §36-12-3.
Recovery by county for provisions furnished, §36-12-3.
Supervision of paupers.
Governing authority, §36-12-1.

INDORSEMENTS.
Counties.
Negotiability of county orders, §36-11-6.

INDUSTRIAL DEVELOPMENT AREAS.
Municipality selling real property in, §36-37-6.

INDUSTRIAL PARKS.
Municipality selling real property in, §36-37-6.

INJUNCTIONS.
Bureau of investigation nomenclature act, §35-3-105.
Counties.
Building, electrical and other codes.
Violations, §36-13-10.

INJUNCTIONS —Cont'd
Emblems.
Department of public safety, §35-2-85.
Names.
Nomenclature of municipal and county police departments, §35-10-7.
Nomenclature of department of public safety.
Use of, §35-2-85.
Nomenclature of municipal and county police departments, §35-10-7.
Sexual offenses against minors.
Computers or electronic devices.
Compelling production of electronic communication records, §35-3-4.1.

INJURIES.
Georgia bureau of investigation.
Line of duty.
Payment of medical, surgical and similar expenses, §35-3-12.
State patrol.
Medical, surgical, etc., expenses of members injured in line of duty.
Payment, §35-2-9.

IN LINE OF DUTY COMPENSATION.
Law enforcement officers, firefighters, prison guards and publicly employed EMTs.
Bureau of investigation agents.
Retention of badge and weapon, §35-3-11.
State patrol.
Retention of badge and weapon, §35-2-49.1.

INSIGNIA.
Bureau of investigation nomenclature act, §§35-3-100 to 35-3-108.
Public safety nomenclature act, §§35-2-80 to 35-2-88.

INSPECTIONS.
Cemeteries.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located.
Permit.
Inspection to insure applicant's compliance, §36-72-13.
Crime information center.
Criminal records, §35-3-37.

INSURANCE.
Commissioner of insurance.
Rules and regulations.
Hearings, §36-85-17.
Counties.
Books of laws and court reports.
Fire insurance, §36-9-4.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Officers and employees.
Expenditures to provide insurance for, §36-1-11.1.
Fire insurance.
Counties.
Books of laws and court reports, §36-9-4.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Local government.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Municipal corporations.
Immunity from liability for damages.
Waiver by purchase of liability insurance, §36-33-1.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Political subdivisions.
Interlocal risk management agencies, §§36-85-1 to 36-85-20.
Rules and regulations.
Hearings, §36-85-17.
State patrol.
Group insurance, §35-2-54.

INTEREST.
Claims against counties.
Orders presented and not paid, §36-11-5.
Conflict of laws.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds.
Repeal of conflicting provisions, §36-82-123.
Development authorities.
Bond issues, §36-62-8.
Downtown development authorities.
Revenue bonds, §36-42-10.

INTEREST —Cont'd
Local government and political subdivisions.
Interest rate management agreements, §§36-82-250 to 36-82-256.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Conflict of laws.
Repeal of conflicting provisions, §36-82-123.
Definitions, §36-82-121.
Exemption from constitution and laws regulating interest rates, §36-82-122.
Interpretation and construction.
Liberal construction of provisions, §36-82-124.
Legislative declaration, §36-82-120.
Purpose of provisions, §36-82-120.
Repeal of regulations as to interest rates in other laws, §36-82-123.
Resolution or ordinance fixing rate, §36-82-122.
Public safety and judicial facilities authorities.
Interest rates on bond issues, §36-75-8.
Redevelopment.
Bond issues.
Tax allocation bonds, §36-44-14.
Resource recovery development authorities.
Bond issues, §36-63-9.
Urban residential finance authorities.
Mortgages or security interests.
Acquisition by authorities.
Rates of interest, §36-41-7.

INTERLOCAL GOVERNMENTAL COOPERATION, §§36-69A-1 to 36-69A-9.
Agreements with agencies of other states.
Limitations on contracts, §36-69A-4.
Performance of governmental services or activities, §36-69A-8.
Powers of localities in carrying out agreements, §36-69A-7.
Required information and provisions, §36-69A-4.
Submission of agreements for approval by governing authority, §36-69A-6.
Construction of act.
Cumulative authority, §36-69A-9.

INTERLOCAL GOVERNMENTAL COOPERATION —Cont'd
Construction of act —Cont'd
Public policy, §36-69A-2.
Short title, §36-69A-1.
Cumulative nature of authority granted, §36-69A-9.
Performance of governmental services or activities.
Agreements with agencies of other states, §36-69A-8.
Powers of localities in carrying out agreements.
Agreements with agencies of other states, §36-69A-7.
Public agencies.
Agreements with agencies of other states, §36-69A-4.
Defined, §36-69A-3.
Joint exercise of powers and authority, §36-69A-3.
Preservation of sovereign immunity, §36-69A-5.
Public policy, §36-69A-2.
Sovereign immunity, preservation of, §36-69A-5.
State, defined, §36-69A-3.
Submission of agreements for approval by governing authority.
Agreements with agencies of other states, §36-69A-6.
Title of act, §36-69A-1.

INTERLOCAL GOVERNMENTAL COOPERATION ACT.
General provisions, §§36-69A-1 to 36-69A-9.
Short title, §36-69A-1.

INTERLOCAL RISK MANAGEMENT AGENCIES, §§36-85-1 to 36-85-20.
Administrative procedure.
Hearings before commissioner of insurance.
Applicability of act, §36-85-17.
Administrators.
Bonds, surety.
Fidelity bond, §36-85-11.
Contracts between agency and administrator, §36-85-10.
Defined, §36-85-1.
Errors and omissions insurance, §36-85-11.
Obligations.
Local government liability for legal obligations, §36-85-9.

INTERLOCAL RISK MANAGEMENT AGENCIES —Cont'd
Assessments.
Fund deficiencies.
Assessments upon members, §36-85-15.
Audits.
Funds, §36-85-19.
Board of trustees, §36-85-3.
Bonds, surety.
Administrator.
Fidelity bond, §36-85-11.
Certificates of authority.
Applications, §36-85-5.
Issuance, §36-85-6.
Refusal to issue, §36-85-6.
Renewal, §36-85-6.
Refusal to renew, §§36-85-6, 36-85-12.
Required, §36-85-5.
Suspension or revocation, §§36-85-6, 36-85-12.
Commissioner of insurance.
Definition of commissioner, §36-85-1.
Examinations.
Periodic examinations, §36-85-14.
Rules and regulations, §36-85-16.
Contracts.
Agency and administrator, §36-85-10.
Creation, §36-85-2.
Agreement creating, §36-85-2.
Certificate of authority, §§36-85-5, 36-85-6, 36-85-12.
Definitions, §36-85-1.
Examinations.
Commissioner of insurance.
Periodic examinations, §36-85-14.
Excess loss funding program, §36-85-18.
Fees.
Exemption from fees, §36-85-13.
Funds.
Amounts to be maintained, §36-85-7.
Audits, §36-85-19.
Deficiencies.
Assessments upon members, §36-85-15.
Excess loss funding program, §36-85-18.
Investment of assets, §36-85-8.
Liquidation, §36-85-15.
Local government liability, §36-85-9.
Maintenance.
Amounts to be maintained, §36-85-7.
Insurers.
Agencies not deemed to be, §36-85-4.

INTERLOCAL RISK MANAGEMENT AGENCIES —Cont'd
Interpretation and construction.
Agency not deemed an insurer, §36-85-4.
Exercise of authority not to constitute provision of liability insurance, §36-85-20.
Investments.
Funds.
Assets, §36-85-8.
Rules and regulations.
Commissioner of insurance, §36-85-16.
Hearings, §36-85-17.
Sovereign immunity.
Not waived by exercise of authority, §36-85-20.
Taxation.
Exemption from taxes, §36-85-13.
Trustees.
Board of trustees, §36-85-3.
INTERMEDIATE CARE HOMES.
Employees' records checks.
Exchange of national criminal history background information, §35-3-34.2.
INTERNET.
Code of ordinances and resolutions.
General codification by local governing authorities.
Availability on internet, §36-80-19.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Identity fraud.
Compelling production of electronic communication records, §35-3-4.1.
Sexual offenses against minors.
Compelling production of electronic communication records, §35-3-4.1.
INTERPRETATION AND CONSTRUCTION.
Crime information center, §35-3-40.
Development authorities.
County and municipal development authorities.
Liberal construction of provisions, §36-62-11.
Downtown development authorities.
Liberal construction of provisions, §36-42-15.
Emergencies.
Mutual aid, §§36-69-8, 36-69-9.
Enterprise zone employment, §36-88-2.

INTERPRETATION AND CONSTRUCTION —Cont'd
Highways, roads and streets.
Municipal street improvements, §36-39-34.
Interest.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds.
Liberal construction of provisions, §36-82-124.
Interlocal risk management agencies.
Agency not deemed an insurer, §36-85-4.
Exercise of authority not to constitute provision of liability insurance, §36-85-20.
Local government and political subdivisions.
Bond issues, §36-82-222.
Municipal corporations.
Powers.
Provisions declared general law, §36-34-8.
Supplemental nature, §36-34-7.
Use of certain terms, §36-30-1.
Municipal courts.
Use of certain terms for court, §36-32-1.
Municipal home rule, §§36-35-6, 36-35-7.
Parks and recreation.
County and municipal recreation systems.
Establishment, maintenance and conduct not mandatory, §36-64-12.
Redevelopment.
Powers cumulative and supplemental, §36-44-23.
Resource recovery development authorities.
Liberal construction of provisions, §36-63-11.
Terrorism.
Antiterrorism task force.
Liberal construction of provisions, §35-3-61.

INVESTIGATIONS.
Identity fraud.
Computers or electronic devices.
Compelling production of electronic communication records, §35-3-4.1.

INVESTIGATIONS —Cont'd
Sexual offenses against minors.
Computers or electronic devices.
Compelling production of electronic communication records, §35-3-4.1.

INVESTMENTS.
Bond issues.
Counties.
Tax proceeds.
Investment of certain proceeds in authorized bonds, §36-1-8.
Local government and political subdivisions.
Authorized investments for bond proceeds, §36-82-7.
County law libraries.
Powers of board of trustees, §§36-15-5, 36-15-6.
Group health benefits for local government employees.
Approved investments, §36-21-6.
Interlocal risk management agencies, §36-85-8.
Local government.
Authorized investments by governing bodies, §§36-80-3, 36-80-4.
Investment pool, §§36-83-1 to 36-83-8.
Authorized investments, §36-83-4.
Citation of act.
Short title, §36-83-1.
Collateral.
Pledge of collateral.
Required from financial institutions, §36-83-5.
Creation, §36-83-8.
Definitions, §36-83-3.
Delegation of investment authority to financial officer, §36-83-4.
Depository board.
Investment policies.
Establishment, §36-83-8.
Technical assistance to local governments, §36-83-7.
Depository institutions.
Defined, §36-83-3.
Pledge of collateral from.
Requirement, §36-83-5.
Financial officer.
Delegation of investment authority to, §36-83-4.
Funds.
Interfund pooling for investment purposes, §36-83-6.
Generally, §36-83-8.

INVESTMENTS —Cont'd
Local government —Cont'd
Investment pool —Cont'd
Interfund pooling for investment purposes, §36-83-6.
Legislative findings, §36-83-2.
Purpose of provisions, §36-83-2.
Resolution or ordinance authorizing investment in pool, §36-83-8.
State technical assistance, §36-83-7.
State treasurer.
Powers and duties, §36-83-8.
Technical assistance to local governments, §36-83-7.
Title of act.
Short title, §36-83-1.
Municipal bonds.
Registration of bonds in which municipal funds invested in name of municipal corporation, §36-38-3.
Tax levy to pay bonded indebtedness.
Funds acquired by, §36-38-1.
Redevelopment.
Urban redevelopment.
Bond issues.
Legal investments, §36-61-13.
Powers of municipalities and counties, §36-61-8.
Urban residential finance authorities.
Bonds deemed authorized investments, §36-41-8.

ISLANDS.
Unincorporated islands, §§36-36-4, 36-36-90 to 36-36-92.

J

JAILS.
Counties.
Construction of county jails, §36-9-9.
Erection and repair of county jail, §36-9-5.
Public safety and judicial facilities authorities, §§36-75-1 to 36-75-13.

JOHNIA BERRY ACT.
DNA analysis upon conviction of felony offense, §§35-3-160 to 35-3-165.

JUDGMENTS.
Claims against counties.
Satisfaction of judgment against county, §36-11-7.

JUDGMENTS —Cont'd
Counties.
Satisfaction of judgment against county, §36-11-7.
Local government code enforcement boards.
Judicial enforcement of administrative fines, §36-74-26.
Satisfaction.
Claims against counties.
Judgment against county, §36-11-7.

JUNKED MOTOR VEHICLES.
Removal of vehicles, §36-60-4.
Adoption of ordinances, §36-60-4.
Authority to conduct for removal, §36-60-4.

JURISDICTION.
Capitol buildings and grounds.
Capitol police division, §35-2-122.
Capitol police division, §35-2-122.
Claims against local government entities.
Superior court wherein entity lies, §36-92-4.
Counties.
Building, electrical and other codes.
Violations, §36-13-5.1.
Unincorporated areas of counties.
Ordinances for governing and policing.
Violations, §36-1-20.
Litter cases.
Municipal courts, §36-32-10.3.
Local government.
Interest rate management agreements.
Qualified interest rate management agreement, §36-82-255.
Shoplifting.
Municipal courts.
Misdemeanor theft by shoplifting, §36-32-9.
Shoplifting of $300 or less, §36-32-9.
State patrol, §35-2-32.

JUVENILE DETENTION FACILITIES.
Public safety and judicial facilities authorities, §§36-75-1 to 36-75-13.

K

KIDDIE PORN, §35-3-4.1.

KIMBERLY'S CALL.
Activation of alert system, §35-3-190.
Termination, §35-3-190.

KIMBERLY'S CALL —Cont'd
Agencies.
Obligations of participating agencies, §35-3-190.
Coordinator of alert system, §35-3-190.
Criteria for activation, §35-3-190.
Development and implementation of alarm system, §35-3-190.
Recruitment of assistance in developing and implementing the alert system, §35-3-190.
Establishment, §35-3-190.
Immunity for dissemination of information, §35-3-190.
Lottery corporation.
Dissemination of alert information to customers at retail locations.
Development of method for notifying vendors, §35-3-190.
Recruitment of assistance in developing and implementing the alert system, §35-3-190.
Termination of alert, §35-3-190.

L

LABOR AND INDUSTRIAL RELATIONS.
Federal work authorization program.
Registration with, utilization, requirement.
Business license, other documents to operate business.
Evidence of authorization to use required, §36-60-6.
Private employers, §36-60-6.
State patrol.
Duty to suppress riots, labor strikes or picketing, §35-2-33.
Trafficking of persons for labor or sexual servitude.
Bureau of investigation.
Duty to identify and investigate violations, §35-3-4.
Subpoena power for investigating violations, §35-3-4.3.
Training law enforcement officers investigating crimes involving, §35-1-16.

LAKE PROPERTY.
Municipality disposing of lake property no longer needed, §36-37-6.

LAND-USE CONTROL.
Zoning generally, §§36-66-1 to 36-66-6, 36-67A-1 to 36-67A-6.

LAW ENFORCEMENT AGENCIES.
Actions, §35-10-9.
Advertisement.
Prohibited use, §§35-10-4, 35-10-5.
Symbols, §35-10-5.
Aliens.
Arrest of illegal aliens, §35-1-17.
Badge.
Defined, §35-10-3.
Blue alert system.
General provisions, §35-3-191.
Capitol police division, §§35-2-120 to 35-2-124.
Chief of police.
Defined, §35-10-3.
Citation of act, §35-10-1.
Criminal history record information.
Dissemination by local criminal justice agencies, §35-3-34.
Criminal justice coordinating council, §§35-6A-1 to 35-6A-10.
Crossing jurisdiction while in pursuit.
Pursuit policies to address, §35-1-14.
Damages, §35-10-9.
Deceased persons.
Identifying.
Duty to acquire, collect, classify and preserve information assisting in, §35-1-8.
Declaration of purpose, §35-10-2.
Department of public safety.
General provisions, §§35-2-1 to 35-2-14.
Georgia state patrol, §§35-2-30 to 35-2-58.
Motor carrier compliance division.
Law enforcement officers, members designated as, §35-2-100.
Motor carrier compliance enforcement division.
Law enforcement officers, members designated as, §35-2-100.

LAW ENFORCEMENT AGENCIES —Cont'd
Department of public safety —Cont'd
Security guard division, §§35-2-70 to 35-2-75.
Director of public safety.
Defined, §35-10-3.
Emblem.
Defined, §35-10-3.
Emergency response and vehicular pursuit policies.
Agencies to adopt, crossing jurisdictions, policies to address, failure to adopt, funding withheld, §35-1-14.
Extraterritorial cooperation and assistance.
Local agencies, commander of operations, §36-69-3.
First offender's criminal records.
Disclosure of exonerated first offender's record to law enforcement unit.
Applicant for employment, §35-3-34.1.
Georgia bureau of investigation.
Antiterrorism task force, §§35-3-60 to 35-3-65.
General provisions, §§35-3-1 to 35-3-13.
Georgia crime information center, §§35-3-30 to 35-3-40.
Missing children information center, §§35-3-80 to 35-3-85.
Georgia police academy, §§35-4-1 to 35-4-9.
Georgia public safety training center, §§35-5-1 to 35-5-7.
Identifying deceased persons.
Duty to acquire, collect, classify and preserve information assisting in, §35-1-8.
Identity fraud.
Incident reports.
Preparation by law enforcement agency, §35-1-13.
Illegal aliens.
Arrest, §35-1-17.
Injunctions, §35-10-7.
Kimberly's call.
Statewide alert system for unapprehended murder or rape suspects, §35-3-190.

LAW ENFORCEMENT AGENCIES —Cont'd
Local governing authority.
Defined, §35-10-3.
Mattie's call act, §§35-3-170 to 35-3-180.
Mutual aid.
Extraterritorial cooperation and assistance.
Local agencies, commander of operations, §36-69-3.
Nomenclature of municipal and county police departments, §§35-10-1 to 35-10-11.
Penalties, §35-10-8.
Civil penalties, §35-10-8.
Criminal penalties, §35-10-10.
Permission to use, §35-10-6.
Person.
Defined, §35-10-3.
Prohibited use, §35-10-4.
Symbols, §35-10-5.
Publication or production.
Prohibited use, §§35-10-4, 35-10-5.
Symbols, §35-10-5.
Public purpose, §35-10-2.
Pursuit policies.
Agencies to adopt, crossing jurisdictions, policies to address, failure to adopt, funding withheld, §35-1-14.
Short title, §35-10-1.
Solicitation.
Prohibited use, §§35-10-4, 35-10-5.
Symbols, §35-10-5.
Symbols.
Permission to use, §35-10-6.
Prohibited use, §35-10-5.
TASERS and electronic control weapons.
Use, requirements, policies, establishment, training, §35-8-26.
Title of act, §35-10-1.
Traffic laws.
Name required on vehicles used to enforce, §35-10-11.
Vehicles used to enforce traffic laws, §35-10-11.
Violations of provisions, §35-10-7.
Willful violator.
Defined, §35-10-3.

LAW ENFORCEMENT OFFICERS.
Academy.
General provisions, §§35-4-1 to 35-4-9.

LAW ENFORCEMENT OFFICERS —Cont'd
Actions.
Peace officers standards and training council.
Civil actions against noncomplying peace officers and law enforcement units, §35-8-17.
Adjoining states.
Appointment of citizens as peace officers in certain cities, §35-8-19.
Administrative procedure.
Peace officers standards and training council.
Disciplinary action.
Applicability of act, §35-8-7.2.
Alabama law enforcement officers.
Fresh pursuit in state.
Authority, §35-1-15.
Aliens.
Arrest of illegal aliens, §35-1-17.
Enforcement of immigration laws.
Cooperation and agreements with federal authorities, §35-1-17.
Transporting illegal aliens to federal facilities, §35-1-17.
Animal handlers.
Animals trained to detect explosives.
Training and certification, §35-8-25.
Antiterrorism task force.
Bomb technicians.
Training and certification, §35-8-25.
General provisions, §§35-3-60 to 35-3-65.
Appeals.
Peace officers standards and training council.
Disciplinary act, §35-8-7.2.
Badges.
Disability arising in line of duty.
Retention of weapon and badge.
Members of uniform division of department of public safety, §35-2-49.1.
Bomb technicians.
Training and certification, §35-8-25.
Bureau of investigation.
Crime information center.
General provisions, §§35-3-30 to 35-3-40.
General provisions, §§35-3-1 to 35-3-13.
Missing children information center.
General provisions, §§35-3-80 to 35-3-85.

LAW ENFORCEMENT OFFICERS —Cont'd
Capitol police division, §§35-2-120 to 35-2-124.
Certification.
Bomb technicians, §35-8-25.
Dogs.
Special skills in training and handling of police dogs.
Applicants possessing, §35-8-8.
Employment related information.
Disclosure to officer, §35-8-8.
Examinations.
Successful completion of academy entrance examination required, §35-8-8.
Explosive ordinance disposal technician, §35-8-25.
Fingerprinted to determine existence of criminal record, §35-8-8.
Handlers of animals trained to detect explosives, §35-8-25.
Jail officers, §35-8-24.
Juvenile correctional officers, §35-8-24.
Municipal probation officers, §35-8-13.1.
Police chaplains, §35-8-13.
Qualifications, §§35-8-8, 35-8-9.
Additional requirements may be adopted, §35-8-16.
Required for employment, §35-8-10.
Exemptions, §35-8-10.
Revocation or suspension of certificate.
Disciplinary action generally, §§35-8-7.1, 35-8-7.2.
Schools.
Basic course to be completed at schools certified by council, §35-8-11.
Speed detection devices.
Persons employed to use, §35-8-12.
Chaplains.
Training and certification of police chaplains, §35-8-13.
Chiefs of police.
Designation and qualifications, §35-1-12.
Training requirements, §§35-8-20, 35-8-20.1.
Volunteer emergency traffic director approval, §35-1-11.
Claims.
Reimbursement of training expenses.
New employer of peace officer, §35-8-22.

LAW ENFORCEMENT OFFICERS —Cont'd
Communications officers.
Basic training, §35-8-23.
Public safety training center.
Administration and coordination of training, §35-5-5.
Compensation.
Subsistence allowance, §35-1-3.
Confidentiality of information.
Employment records, §35-8-15.
County police.
General provisions, §§36-8-1 to 36-8-7.
Crime information center.
General provisions, §§35-3-30 to 35-3-40.
Criminal record investigation.
Fingerprinted to determine existence of criminal record.
Requirements for employment or certification, §35-8-8.
Criminal street gangs.
Peace officers standards and training council.
Establishment of training courses for peace officers, §35-8-7.
Crossing jurisdiction while in pursuit.
Emergency pursuit policies to address, §35-1-14.
Definitions.
Employment and training of peace officers, §35-8-2.
Communications officer, §35-8-23.
Department of public safety.
Motor carrier compliance division.
Law enforcement officers, members designated as, §35-2-100.
Motor carrier compliance enforcement division.
Law enforcement officers, members designated as, §35-2-100.
Disability arising in line of duty.
Retention of weapon and badge.
Members of uniform division of department of public safety, §35-2-49.1.
Disciplinary action generally.
Revocation or suspension of certificate, §§35-8-7.1, 35-8-7.2.
Dispatchers.
Basic training, §35-8-23.
Public safety training center.
Administration and coordination of training, §35-5-5.

LAW ENFORCEMENT OFFICERS —Cont'd
Dispatchers —Cont'd
Establishment and training of dispatch centers, §36-60-19.
Emergencies.
Liability of officers performing duties at scene of emergency, §35-1-7.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.
Volunteer emergency traffic directors, §35-1-11.
Emergency response and vehicular pursuit policies.
Agencies to adopt, crossing jurisdictions, policies to address, failure to adopt, funding withheld, §35-1-14.
Employment and training of peace officers, §§35-8-1 to 35-8-26.
Actions.
Noncomplying peace officers and law enforcement units.
Civil actions by council, §35-8-17.
Basic training course.
Completion required, §35-8-9.
Schools certified by council.
Course to be completed at, §35-8-11.
Bomb technicians, §35-8-25.
Chaplains.
Training and certification of police chaplains, §35-8-13.
Citation of act.
Short title, §35-8-1.
Communications officers.
Basic training course, §35-8-23.
Defined, §35-8-23.
Definitions, §35-8-2.
Department heads.
Training requirements, §§35-8-20, 35-8-20.1.
Emergency peace officers.
Exceptions to provisions, §35-8-18.
Employment related information.
Disclosure to officer, §35-8-8.
Exceptions.
Emergency peace officer, §35-8-18.
Retired police officers.
Exemption from training requirements, §35-8-21.
Expenses.
Reimbursement by new employer of peace officer, §35-8-22.

LAW ENFORCEMENT OFFICERS —Cont'd
Employment and training of peace officers —Cont'd
Explosive ordnance disposal technicians, §35-8-25.
Family violence investigations.
Guidelines and procedures, establishment, use by law enforcement training centers, §35-1-10.
Jail officers, §35-8-24.
Juvenile correctional officers, §35-8-24.
Municipal probation officers, §35-8-13.1.
Noncompliance, §35-8-17.
Peace officers standards and training council, §§35-8-3 to 35-8-7.2.
Police chiefs.
Designation of a chief, §35-1-12.
Training requirements, §§35-8-20, 35-8-20.1.
Volunteer emergency traffic director approval, §35-1-11.
Qualifications for employment or certification, §§35-8-8, 35-8-9.
Additional requirements may be adopted, §35-8-16.
Training requirements, §35-8-21.
Records, §35-8-15.
Title of act.
Short title, §35-8-1.
Volunteer emergency traffic directors, §35-1-11.
Wardens.
Training requirements, §35-8-20.
Employment records, §35-8-15.
Employment related information.
Defined, §35-8-8.
Disclosure.
Investigations for purposes of hiring, certifying or continuing certification, §35-8-8.
Expenses.
Reimbursement of training expenses.
New employer of peace officer, §35-8-22.
Explosive ordinance disposal technicians.
Training and certification, §35-8-25.

LAW ENFORCEMENT OFFICERS —Cont'd
Family violence.
Peace officers standards and training council.
Family violence training.
Guidelines and procedures, establishment, use by law enforcement training centers, §35-1-10.
Fingerprinted to determine existence of criminal record.
Requirements for employment or certification, §35-8-8.
Florida law enforcement officers.
Fresh pursuit in state.
Authority, §35-1-15.
Fresh pursuit.
Officers from Alabama, Florida, North Carolina, South Carolina, or Tennessee, §35-1-15.
Georgia bureau of investigation.
Antiterrorism task force.
General provisions, §§35-3-60 to 35-3-65.
Georgia peace officer standards and training act, §§35-8-1 to 35-8-26.
Georgia state patrol.
General provisions, §§35-2-30 to 35-2-58.
Good Samaritans.
Emergencies.
Performing duties at scene of emergency, §35-1-7.
Heads of law enforcement subdivision unit.
Designation and qualifications, §35-1-12.
Training requirements, §35-8-20.1.
High-speed police chases, §35-1-14.
Illegal aliens.
Arrest, §35-1-17.
Transporting to federal facilities, §35-1-17.
Immigration and customs laws.
Enforcement.
Cooperation and agreements with federal authorities, §35-1-17.
Memorandum of understanding with federal agencies.
Designated officers to be trained, authority of trained officers, §35-2-14.

LAW ENFORCEMENT OFFICERS —Cont'd
Jail officers.
Employment and training, §35-8-24.
Juvenile correctional officers.
Employment and training, §35-8-24.
Local government.
County police.
General provisions, §§36-8-1 to 36-8-7.
Missing children.
Information center, §§35-3-80 to 35-3-85.
Motor vehicles.
Stolen motor vehicles and license plates.
Reporting, §35-1-4.
Municipal corporations.
Compensation of law enforcement officers.
Salary as sole basis, §36-30-9.
Torts of police or other officers.
Liability, §36-33-3.
Nonresidents.
Adjoining states.
Appointment of citizens as peace officers in certain cities, §35-8-19.
North Carolina law enforcement officers.
Fresh pursuit in state.
Authority, §35-1-15.
Notice to head of law enforcement agency employing officer.
Investigation or disciplinary proceeding against officer, certification revoked, §35-8-7.1.
Peace officers standards and training council.
Actions against noncomplying peace officers and law enforcement units, §35-8-17.
Appropriations, §35-8-6.
Communications officers.
Duties as to training for, §35-8-23.
Department of public safety.
Administrative assignment to, §35-8-3.
Disciplinary action, §§35-8-7.1, 35-8-7.2.
Duties, §35-8-7.
Established, §35-8-3.

LAW ENFORCEMENT OFFICERS —Cont'd
Peace officers standards and training council —Cont'd
Executive director, §35-8-6.
Family violence training.
Guidelines and procedures, establishment, use by law enforcement training centers, §35-1-10.
Gifts and grants.
Acceptance, §35-8-6.
Investigators, §35-8-6.
Members, §35-8-3.
Reimbursement, §35-8-5.
Officers, §35-8-4.
Powers, §35-8-7.
Quorum, §35-8-4.
Reimbursement of members, §35-8-5.
Reports to governor and general assembly, §35-8-4.
Subpoenas, §35-8-6.
Trafficking persons for labor or sexual servitude.
Training officers investigating crimes involving, §35-1-16.
Prisons and prisoners.
Jail officers, §35-8-24.
Juvenile correctional officers, §35-8-24.
Public safety training center.
General provisions, §§35-5-1 to 35-5-7.
Revocation or suspension of certificate, §§35-8-7.1, 35-8-7.2.
South Carolina law enforcement officers.
Fresh pursuit in state.
Authority, §35-1-15.
Special policemen.
General provisions, §§35-9-1 to 35-9-15.
Speed detection devices.
Certification of persons employed to use, §35-8-12.
Defined, §35-8-2.
State patrol.
General provisions, §§35-2-30 to 35-2-58.
Street gangs.
Peace officers standards and training council.
Establishment of training courses for peace officers, §35-8-7.

LAW ENFORCEMENT OFFICERS —Cont'd
Subpoenas.
Peace officers standards and training council, §35-8-6.
Subsistence allowance, §35-1-3.
TDD's.
Training of communications officers, §35-8-23.
Tennessee law enforcement officers.
Fresh pursuit in state.
Authority, §35-1-15.
Terrorism.
Antiterrorism task force.
General provisions, §§35-3-60 to 35-3-65.
Trafficking persons for labor or sexual servitude.
Training officers investigating crimes involving, §35-1-16.
Traffic laws.
Obedience to authorized persons directing traffic.
Volunteers directing traffic in emergencies, §35-1-11.
Weapons.
Disability arising in line of duty.
Retention of weapon and badge.
Members of uniform division of department of public safety, §35-2-49.1.

LAW LIBRARIES.
County law libraries.
Code of ordinances and resolutions.
Copy furnished to library, §36-80-19.
Funds used to establish and maintain code, §36-15-7.
Additional costs collected in civil and criminal proceedings, §36-15-9.
General provisions, §§36-15-1 to 36-15-12.

LEASES.
Counties.
Multiyear lease, purchase or lease purchase contracts, §36-60-13.
Acceptance of property subject to contract for lease purchase or installment purchase, §36-60-15.
Municipal corporations.
Multiyear lease, purchase or lease purchase contracts, §36-60-13.
Acceptance of property subject to contract for lease purchase or installment purchase, §36-60-15.

LEASES —Cont'd
Municipal corporations —Cont'd
Nonprofit corporations.
Operation and management of recreation property, §36-37-6.
Use, operation or management of property.
Charter providing no authorization, §36-37-6.
Public safety and judicial facilities authorities.
Power to enter into, §36-75-7.
Subleases.
Municipal corporations.
Powers, §36-34-3.

LEGAL ORGANS.
Abandoned cemeteries.
Proposed development, §36-72-7.
Amendments to municipal charters, §36-35-3.
Bonds.
Local bond elections, §36-82-4.1.
Validation at show cause hearings, §36-82-22.
Definitions.
Law enforcement unit defined.
Organs included, §35-8-2.
Disposal of municipal property, §36-37-6.
Elected municipal officials.
Raising of pay.
Publication of proposal, §36-35-4.
Georgia peace officer standards and training council.
Reimbursement to organs for personnel training, §35-8-7.
Local government.
Annual audits required.
Publication where failure to do so, §36-81-7.
Peace officer training.
Speed detection device certification.
Required of police personnel, §35-8-12.
Revenue bonds.
Validation hearings, §36-82-76.
Sales of county real property, §36-9-3.

LEVY OF ATTACHMENT.
Group health benefits for local government employees.
Exemptions, §36-21-7.

LIABILITY.
Ante litem notice.
Counties.
Time for presentation of claims against, §36-11-1.
Municipal corporations' liability for acts or omissions of officers, etc.
Written demand prerequisite to action for injury to person or property, §36-33-5.
Counties.
When county liable to be sued, §36-1-4.
County surveyors.
Persons who may perform duties of office when there is no county surveyor, §36-7-13.
Indigent persons.
Supervision and support of paupers.
Duty of relatives to support paupers generally, §36-12-3.
Interment of deceased indigents generally, §36-12-5.
Persons sending pauper to county for support purposes, §36-12-4.
Peace officers.
Performance of duties at scene of emergency, §35-1-7.
Police.
Special policemen.
Compensation, §35-9-13.
Immunity of state from liability for acts, §35-9-12.

LIBRARIES.
County law libraries.
General provisions, §§36-15-1 to 36-15-12.
Law libraries.
County law libraries.
General provisions, §§36-15-1 to 36-15-12.
Municipal corporations.
Powers.
Acquisition and operation of certain buildings and facilities, §36-34-3.
Lease agreements for providing of library services, §36-34-5.1.

LICENSES.
Backdated licenses.
Issuance by county or municipal officers or employees.
Prohibited, §36-60-26.

LICENSES —Cont'd
Local government.
Business licenses.
Investigation of business for issuance of license.
Certain persons prohibited from investigating, §36-60-9.
Misdemeanors.
Investigation of business for issuance of county or municipal license.
Certain persons prohibited from investigating.
Violation of prohibition, §36-60-9.

LIENS.
County treasurers.
Bonds, surety, §§36-6-7, 36-6-8.
Electricity.
Unpaid charges for electricity.
Limited liens, §36-60-17.
Gas.
Unpaid charges for gas service.
Limited liens, §36-60-17.
Local government code enforcement boards.
Length of liens, §36-74-27.
Unpaid administrative fines, §36-74-26.
Sewage systems.
Unpaid charges for sewerage service.
Limited liens, §36-60-17.
Water supply.
Unpaid charges for water service.
Limited liens, §36-60-17.

LIEUTENANT GOVERNOR.
Security guards.
Employment for protection, §35-2-73.

LIMITATION OF ACTIONS.
Highways, roads and streets.
Municipal street improvements.
Assessments.
Actions contesting or enjoining, §36-39-24.
Municipal corporations.
Actions for injury to persons or property.
Suspension of limitations, §36-33-5.
Public works.
Local government bidding and contracting.
Payment bonds, §36-91-95.

LINE OF DUTY INJURIES.
Georgia bureau of investigation agents, §35-3-12.
State patrol, §35-2-9.

LIS PENDENS NOTICE.
Local government code enforcement boards.
Liens.
Enforcement against creditor or subsequent purchaser, §36-74-27.

LITTERING.
Jurisdiction over littering offenses.
Municipal courts, §36-32-10.3.
Municipal courts.
Jurisdiction over littering offenses, §36-32-10.3.

LOANS.
Public safety and judicial facilities authorities.
Power to extend credit and make loans, §36-75-7.
Redevelopment.
Financing of redevelopment costs, §§36-44-13, 36-44-16.
Urban residential finance authorities, §36-41-6.

LOCAL EMERGENCIES.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.

LOCAL GOVERNMENT.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Adult bookstores and movie houses.
Restriction to certain areas, §36-60-3.
Alarms.
Installation, service, sale, etc., §36-60-12.
Annexation.
General provisions, §§36-36-1 to 36-36-92.
Antitrust liability.
Immunity from, §§36-65-1, 36-65-2.
Audits, §36-60-8.
Grant from governor's emergency fund or special project appropriation, §36-81-8.1.
Public inspection.
Availability of copies for, §36-81-7.
Reports.
Annual audit reports, §§36-81-7, 36-81-8.
Requirement, §36-81-7.
State assistance.
Audits as condition for receipt, §36-81-20.

LOCAL GOVERNMENT —Cont'd
Authorities.
County and municipal development authorities.
General provisions, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Downtown development authorities.
Conduct of directors and members of downtown development authorities, etc., §36-62A-1.
General provisions, §§36-42-1 to 36-42-16.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.
Urban residential finance authorities.
General provisions, §§36-41-1 to 36-41-13.
Bicycles.
Road grates.
Installation to accommodate bicycles, §36-60-5.
Bond issues.
Commercial paper notes.
Governmental entity authorized to issue bonds, notes or certificates.
Definitions, authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
Interest.
Local governments and political subdivisions.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Municipal bonds.
General provisions, §§36-38-1 to 36-38-23.
Payments in lieu of taxes.
PILOT restriction act, §36-80-16.1.
Private activity bonds.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.
Repayment obligations.
Local governments and political subdivisions, §§36-82-140 to 36-82-142.
Validation.
Local governments and political subdivisions.
General provisions, §§36-82-20 to 36-82-47.

LOCAL GOVERNMENT —Cont'd
Boundaries.
Counties.
Change of boundaries, §§36-3-1 to 36-3-5.
Settlement of boundary disputes, §§36-3-20 to 36-3-27.
Municipal corporations.
Annexation.
General provisions, §§36-36-1 to 36-36-92.
Bridges.
County bridges, §§36-14-1 to 36-14-3.
Budgets and audits, §§36-81-1 to 36-81-20.
Adoption, §36-81-6.
Audits, §36-60-8.
Grant from governor's emergency fund or special project appropriation, §36-81-8.1.
Public inspection.
Availability of copies for, §36-81-7.
Reports.
Annual audit reports, §§36-81-7, 36-81-8.
Requirement, §36-81-7.
State assistance.
Audits as condition for receipt, §36-81-20.
Balanced budget.
Requirement of annual balanced budget, §36-81-3.
Budget amendments, §36-81-3.
Budget hearing, §36-81-5.
Notice, §36-81-5.
Budget officer, §36-81-4.
Defined, §36-81-2.
Proposed budget.
Preparation, §36-81-5.
Budget ordinance or resolution, §36-81-6.
Adoption, §36-81-3.
Defined, §36-81-2.
Conflict of laws.
Effect of provisions on other laws, §§36-81-9, 36-81-10.
Courthouse security plans.
Development and implementation.
Approval by governing authority, §36-81-11.
Definitions, §36-81-2.
Electronic transmission of budgets, §36-80-21.
Executive budget.
Utilization, §36-81-4.

LOCAL GOVERNMENT —Cont'd
Budgets and audits —Cont'd
Finances report by local government, §36-81-8.
Fiscal year.
Establishment, §36-81-3.
Forfeiture of state grant.
Grant certification form required, audit required, failure to comply, §36-81-8.1.
Form of budget, §36-81-6.
Grant certification forms, §36-81-8.1.
Grant from governor's emergency fund or special project appropriation.
Grant certification form, requirement, audit, forfeiture, failure to comply, §36-81-8.1.
Independent authority indebtedness report, §36-81-8.
Intent of provisions, §36-81-1.
Legislative declaration, §36-81-1.
Notice.
Budget hearing, §36-81-5.
Proposed budget, §36-81-5.
State assistance.
Audits as condition for, §36-81-20.
State auditor.
Grant certification form, §36-81-8.1.
Building, electrical and other codes.
Counties.
General provisions, §§36-13-1 to 36-13-12.
Burglar alarms.
Installation, service, sale, etc., §36-60-12.
Business license, occupational tax certificate, other document required to operate business.
Evidence of state licensure before issuance, §36-60-6.
Federal work authorization programs.
Evidence of authorization to use upon renewal, §36-60-6.
Cable television.
Competition among providers, §§36-90-1 to 36-90-8.
Cemeteries.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
City business improvement districts.
General provisions, §§36-43-1 to 36-43-9.
Claims against counties.
General provisions, §§36-11-1 to 36-11-7.

LOCAL GOVERNMENT —Cont'd
Claims against counties —Cont'd
Motor vehicle claims.
Waiver of immunity.
Local government entities, §§36-92-1 to 36-92-5.
Code enforcement boards.
Generally, §§36-74-1 to 36-74-50.
Code of ordinances and resolutions.
Adoption of general codification by ordinance, §36-80-19.
Copies, furnishing, §36-80-19.
County law library.
Copy furnished to, §36-80-19.
Funds used to establish and maintain code, §36-15-7.
Additional costs collected in civil and criminal proceedings, §36-15-9.
General codification, §36-80-19.
Internet, availability on, §36-80-19.
Official citation of code, §36-80-19.
Combined, consolidated and merged programs.
Area offices.
Establishment by state and its agencies, §36-80-8.
Assistance.
State and its agencies authorized to furnish, §36-80-6.
Contracts.
State and its agencies authorized to execute, §36-80-7.
Incentives.
State and its agencies authorized to furnish, §36-80-6.
Offices.
Area offices.
Establishment by state and its agencies, §36-80-8.
Plans.
State and its agencies authorized to execute, §36-80-7.
Submission.
State and its agencies may require, §36-80-9.
Rules and regulations.
Promulgation by state and its agencies, §36-80-9.
Services.
State and its agencies authorized to furnish, §36-80-6.
Commercial paper notes.
Authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
LOCAL GOVERNMENT —Cont'd
Conflict of laws.
Budgets and audits.
Effect of provisions on other laws, §§36-81-9, 36-81-10.
Conflicts of interest.
Zoning, §§36-67A-1 to 36-67A-6.
Contracts.
Counties.
Public works.
General provisions, §§36-10-1 to 36-10-2.2.
Interest rate management agreements, §§36-82-250 to 36-82-256.
Motor vehicles.
Junked motor vehicles.
Removal, §36-60-4.
Multiyear lease, purchase or lease purchase contracts, §36-60-13.
Acceptance of property subject to contract for lease purchase or installment purchase, §36-60-15.
One-year or less, §36-60-14.
Public utility services.
Conditions and limitations, §36-80-17.
Counties.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Boards of commissioners, §§36-5-20 to 36-5-29.
Change or removal of county site, §§36-4-1 to 36-4-6.
Coordinated and comprehensive planning by counties and municipalities, §§36-70-1 to 36-70-5.
County property generally, §§36-9-1 to 36-9-11.
Grants of state funds to counties.
Grants for public purposes based upon road mileage, §§36-17-1 to 36-17-3.
Grants to counties for county roads and maintenance, §§36-17-20 to 36-17-25.
Immunity from antitrust liability, §§36-65-1, 36-65-2.
Minutes of meetings.
Governing body.
Official minutes, §36-1-25.
Mutual aid, §§36-69-1 to 36-69-10.
Organization of county government.
County governing authorities, §§36-5-20 to 36-5-29.

LOCAL GOVERNMENT —Cont'd
Counties —Cont'd
Regulation of cable television systems, §§36-18-1 to 36-18-5.
Service delivery, §§36-70-20 to 36-70-28.
Urban redevelopment, §§36-61-1 to 36-61-19.
Debt incurred by counties, municipalities or other political subdivisions.
Relief from or composition of debts under federal statute.
Prohibited, §36-80-5.
Unbonded debt.
Annual sinking fund, §36-80-14.
Election for authorization.
Declaration of result, §36-80-12.
Favorable vote.
Effect, §36-80-13.
Incurring unbonded debt following favorable vote, §36-80-13.
Notice, §36-80-11.
Procedure.
Applicable provisions, §36-80-10.
Requirement, §36-80-10.
Returns, §36-80-12.
Voting, §36-80-12.
Sinking fund.
Annual sinking fund, §36-80-14.
Definitions.
Budgets and audits, §36-81-2.
Efficiency, §36-86-3.
Interest rate management agreements, §36-82-250.
Interest rates on obligations other than general obligation bonds, §36-82-121.
Revenue bonds, §36-82-61.
Development.
Impact fees.
General provisions, §§36-71-1 to 36-71-13.
Redevelopment.
Powers of counties and municipalities generally, §§36-44-1 to 36-44-23.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Development authorities.
County and municipal development authorities, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
LOCAL GOVERNMENT —Cont'd
Development authorities —Cont'd
Downtown development authorities.
Conduct of directors and members of downtown development authorities, etc., §36-62A-1.
General provisions, §§36-42-1 to 36-42-16.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.
Districts.
City business improvement districts.
General provisions, §§36-43-1 to 36-43-9.
Downtown development authorities.
Conduct of directors and members of downtown development authorities, etc., §36-62A-1.
General provisions, §§36-42-1 to 36-42-16.
Duplication of services.
Service delivery generally, §§36-70-20 to 36-70-28.
Efficiency, §§36-86-1 to 36-86-4.
Citation of chapter, §36-86-1.
Definitions, §36-86-3.
Grant program.
Categories, §36-86-4.
Establishment, §36-86-4.
Legislative findings and determination, §36-86-2.
Purpose of chapter, §36-86-2.
Short title of chapter, §36-86-1.
Electronic security systems.
Installation, service, etc., §36-60-12.
Emergencies.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.
Eminent domain.
Urban redevelopment.
Requirements to exercise power, §36-61-3.1.
Finance.
Interest rate management agreements, §§36-82-250 to 36-82-256.
Fire alarms.
Installation, service, sale, etc., §36-60-12.
Fireworks.
Prohibition of sale or services, restrictions, §36-60-24.
Grants.
Local governmental efficiency grant program, §36-86-4.

LOCAL GOVERNMENT —Cont'd
Grants —Cont'd
Municipal corporations.
Grants of state funds.
General provisions, §§36-40-1 to 36-40-46.
Health benefits programs for officers and employees.
Group programs, §§36-21-1 to 36-21-10.
Highways, roads and streets.
Municipal street improvements.
General provisions, §§36-39-1 to 36-39-34.
Hospitals.
Bond issues.
Excess proceeds of bonds issued to match state and federal allocations.
Use, §36-60-7.
Housing.
Urban residential finance authorities.
General provisions, §§36-41-1 to 36-41-13.
Immigration sanctuary policies prohibited, §36-80-23.
Immunity.
Antitrust liability, §§36-65-1, 36-65-2.
Motor vehicle claims.
Waiver of immunity, §§36-92-1 to 36-92-5.
Indigent persons.
Counties.
Supervision and support generally, §§36-12-1 to 36-12-5.
Industrial waste water treatment services.
Contracts to provide, §36-60-2.
Insurance.
Group health benefits programs for officers and employees, §§36-21-1 to 36-21-10.
Administrative expenses, §§36-21-3, 36-21-5.
Audits, §36-21-4.
Board of directors, §36-21-3.
Definitions, §36-21-2.
Establishment of benefit plans, §36-21-5.
Funds.
Contributions by county or employee, §36-21-5.
Insurance statutes of title 33 inapplicable, §36-21-8.
Investment of funds, §36-21-6.

LOCAL GOVERNMENT —Cont'd
Insurance —Cont'd
Group health benefits programs for officers and employees —Cont'd
Funds —Cont'd
Protection from process, levy, attachment or assignment, §36-21-7.
Purpose, §36-21-1.
State debt not to be created, §36-21-10.
Tax exempt status of program, §36-21-9.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Interest.
Local governments and political subdivisions.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Interest rate management agreements, §§36-82-250 to 36-82-256.
Annual financial statements.
Required information, §36-82-254.
Authorized qualified interest rate management agreement, §36-82-251.
Credit enhancement and liquidity agreements, §36-82-253.
Definitions, §36-82-250.
Financial statements.
Required information, §36-82-254.
Interest rate management plans.
Annual review, §36-82-252.
Defined, §36-82-250.
Plan required, §36-82-252.
Renewal, §36-82-253.
Reporting requirements, §36-82-252.
Requirements for plan, §36-82-253.
Termination, §36-82-253.
Obligations for payment.
Provisions and limitations, §36-82-253.
Prior contracts.
Applicability, §36-82-256.
Qualified interest rate management agreement.
Applicability of Georgia law, §36-82-255.
Authorized, §36-82-251.
Court jurisdiction, §36-82-255.
Defined, §36-82-250.

LOCAL GOVERNMENT —Cont'd
Interlocal cooperation act.
General provisions, §§36-69A-1 to 36-69A-9.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Investments.
Authorized investments by governing bodies, §36-80-3.
Delegation by authority to financial officer, §36-80-4.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Law enforcement officers.
County police.
General provisions, §§36-8-1 to 36-8-7.
Libraries.
County law libraries.
General provisions, §§36-15-1 to 36-15-12.
Licenses.
Business licenses.
Investigation of business for issuance of license.
Certain persons prohibited from investigating, §36-60-9.
Local government authorities.
Debt defined, §36-80-16.
Defined, §36-80-16.
Payments in lieu of taxes.
PILOT restriction act, §36-80-16.1.
Registration act, §36-80-16.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Merger of municipal government with county, §§36-68-1 to 36-68-4.
Constitutional authority for provisions, §36-68-1.
County containing no municipality.
Conditions under which deemed a consolidated government, §36-68-4.
Enabling local law.
Mandatory features, §36-68-3.
Optional features, §36-68-2.
Purpose of provisions, §36-68-1.
Military affairs.
Land near military installations.
Planning and zoning decisions, §36-66-6.

LOCAL GOVERNMENT —Cont'd
Military affairs —Cont'd
Timber sales from military installations and facilities.
Allocation and expenditure of proceeds, §36-80-15.
Motor vehicle claims.
Waiver of immunity, §§36-92-1 to 36-92-5.
Construction and interpretation.
Effective date of provisions, §36-92-5.
Definitions, §36-92-1.
Effective date of chapter, §36-92-5.
Jurisdiction.
Superior court wherein entity lies, §36-92-4.
Negligent use of motor vehicle, §36-92-2.
No employee liability, §36-92-3.
Pleadings.
Party defendants, §36-92-3.
Punitive or exemplary damages, §36-92-4.
Recovery of interest, §36-92-2.
Scope of employment.
Criteria for liability, §36-92-2.
Settlement constitutes bar, §36-92-3.
Sources for payment of settled claims, §36-92-4.
Waiver of sovereign immunity, §36-92-2.
Witnesses.
Local government officer or employee as witness, §36-92-3.
Workers' compensation.
No waiver of remedy under act, §36-92-3.
Motor vehicles.
Decal or seal on vehicles owned or leased by local government, §36-80-20.
Junked motor vehicles.
Removal, §36-60-4.
Self-service motor fuel dispensing pumps.
Licensing, §36-60-1.
Municipal corporations.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Annexation of territory.
Application by owners of 60 percent of land and 60 percent of electors, §§36-36-30 to 36-36-40.

LOCAL GOVERNMENT —Cont'd
Municipal corporations —Cont'd
Annexation of territory —Cont'd
Resolution and referendum, §§36-36-50 to 36-36-61.
Bond issues.
Compromise of bonded debt, §§36-38-20 to 36-38-23.
Coordinated and comprehensive planning by counties and municipalities, §§36-70-1 to 36-70-5.
Downtown development authorities.
Conduct of directors and members of downtown development authorities, etc., §36-62A-1.
Grants of state funds.
Grants for public purposes, §§36-40-20 to 36-40-25.
Grants for purchase, construction, etc., of capital outlay items, §§36-40-40 to 36-40-46.
Immunity from antitrust liability, §§36-65-1, 36-65-2.
Municipal courts.
Georgia municipal courts training council, §§36-32-20 to 36-32-27.
Municipal training, §§36-45-1 to 36-45-9.
Mutual aid, §§36-69-1 to 36-69-10.
Property.
Acquisition, sale, lease, etc., of real and personal property generally, §§36-37-1 to 36-37-10.
Service delivery, §§36-70-20 to 36-70-28.
Street improvements, §§36-39-1 to 36-39-34.
Urban redevelopment, §§36-61-1 to 36-61-19.
Mutual aid agreements.
Emergencies, §§36-69-1 to 36-69-10.
Parks and recreation.
County and municipal recreation systems.
General provisions, §§36-64-1 to 36-64-15.
Paupers.
Counties.
Supervision and support generally, §§36-12-1 to 36-12-5.
Payments in lieu of taxes.
PILOT restriction act, §36-80-16.1.
Peace officers.
County police.
General provisions, §§36-8-1 to 36-8-7.

LOCAL GOVERNMENT —Cont'd
PILOT restriction act.
Payments in lieu of taxes, §36-80-16.1.
Planning.
Coordinated and comprehensive planning by counties and municipalities, §§36-70-1 to 36-70-5.
Service delivery, §§36-70-20 to 36-70-28.
Police.
County police.
General provisions, §§36-8-1 to 36-8-7.
Private activity bonds.
Allocation system, §§36-82-180 to 36-82-202.
Public safety training center.
Expenditures for use of center.
Authorized, §35-5-5.
Public utilities.
Contract conditions and limitations, §36-80-17.
Public works.
Counties.
Public contracts generally, §§36-10-1 to 36-10-2.2.
Local government bidding and contracting, §§36-91-1 to 36-91-95.
Regional facilities, §§36-73-1 to 36-73-4.
Recreation system.
County and municipal recreation system, §§36-64-1 to 36-64-15.
Redevelopment.
Powers of counties and municipalities generally, §§36-44-1 to 36-44-23.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Regional facilities.
Contracts for, §§36-73-1 to 36-73-4.
Registration act.
Local government authorities, §36-80-16.
Reports.
Budgets and audits.
Annual audit reports, §§36-81-7, 36-81-8.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.

LOCAL GOVERNMENT —Cont'd
Revenue bonds.
Local governments and political subdivisions.
General provisions, §§36-82-60 to 36-82-85, 36-82-100.
Security systems.
Installation, service, sale, etc., §36-60-12.
Service delivery, §§36-70-20 to 36-70-28.
Alternative dispute resolution, §36-70-25.
Procedures, §36-70-25.1.
Approval, §36-70-25.
Review and revision of approved strategy, §36-70-28.
Components of strategy, §36-70-23.
Criteria for service delivery strategy, §36-70-24.
Date for process initiation, §36-70-22.
Deadline for implementation agreement, §36-70-21.
Implementation agreement, §36-70-21.
Inconsistent projects, limitation of funding, §36-70-27.
Intention of legislature, §36-70-20.
Legislative intent, §36-70-20.
Limitation of funding for inconsistent projects, §36-70-27.
Process initiation, §36-70-22.
Required components, §36-70-23.
Required criteria, §36-70-24.
Required filing, §36-70-26.
Review and revision of strategy, §36-70-28.
Verification of components, §36-70-26.
Slums.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Sovereign immunity.
Motor vehicle claims.
Waiver of immunity, §§36-92-1 to 36-92-5.
State aid.
Counties.
Grants of state funds.
General provisions, §§36-17-1 to 36-17-25.
Municipal corporations.
Grants of state funds.
General provisions, §§36-40-1 to 36-40-46.

LOCAL GOVERNMENT —Cont'd
State patrol.
Division or district headquarters.
Purchase or conveyance of property for use as.
Authorization, §35-2-41.
Street improvements.
Municipal street improvements.
General provisions, §§36-39-1 to 36-39-34.
Taxation.
Notes, certificates and other evidence of indebtedness in anticipation of taxes.
Power to issue, §36-80-2.
Trees and timber.
Military installations and facilities.
Proceeds of timber sales from.
Allocation and expenditure, §36-80-15.
United States.
Debts under federal statute.
Relief from or composition of.
Prohibited, §36-80-5.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Voting rights act of 1965.
Submissions to United States Department of Justice pursuant to.
Attorney general to receive copy, §36-60-11.
Water supply.
Water storage facility projects, §§36-91-100 to 36-91-102.
Water treatment systems.
Operated and maintained by private entities, §36-60-15.1.
Zoning.
Conflicts of interest, §§36-67A-1 to 36-67A-6.
Procedures generally, §§36-66-1 to 36-66-6.

LOCAL GOVERNMENT CABLE FAIR COMPETITION ACT.
Competition among providers, §§36-90-1 to 36-90-8.
Short title, §36-90-1.

LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS, §§36-74-1 to 36-74-50.
Abolishment of boards, §36-74-3.
Administrative fines, §36-74-26.

LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS —Cont'd
Administrative orders, §36-74-24.
Alternative code enforcement systems.
Adoption, §36-74-3.
Appeals to superior courts.
Adverse agency action, §36-74-28.
Applicability of act, §36-74-20.
Boards created prior to January 1, 2003, §§36-74-40 to 36-74-50.
Administrative fines, §36-74-46.
Appeal of final administrative order, §36-74-48.
Applicability of provisions, §36-74-40.
Chairperson, §36-74-42.
Compensation and expenses, §36-74-42.
Correction of violation, reasonable time, §36-74-43.
Definitions, §36-74-41.
Effective date, §36-74-40.
Enforcement by other lawful means, §36-74-50.
Fines, orders to pay, §36-74-44.
Administrative fines, §36-74-46.
Foreclosure on lien, costs, §36-74-47.
Hearing.
Calling, §36-74-44.
Procedure, §36-74-44.
Scheduling, notice, §36-74-43.
Initiation of proceedings, §36-74-43.
Legal counsel.
Appointment, §36-74-42.
Liens.
Length, foreclosure, costs, §36-74-47.
Membership, §36-74-42.
Notices required by article, §36-74-49.
Orders, §36-74-44.
Other enforcement methods, §36-74-50.
Powers, §36-74-45.
Publication.
Service of required notices, §36-74-49.
Quorum, §36-74-42.
Repeat violations, §36-74-43.
Service of required notices, §36-74-49.
Subpoenas, issuance, §36-74-45.
Superior court, appeal to, §36-74-48.
Call of hearing, §36-74-24.
Chairperson.
Appointment, §36-74-22.
Call of hearings, §36-74-24.

LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS —Cont'd
Citation of act, §36-74-1.
Code enforcement officers.
Commencement of proceedings, §36-74-23.
Defined, §36-74-21.
Composition of board, §36-74-22.
Construction of act.
Applicability, §36-74-20.
Choice of law, §36-74-30.
Legislative intent, §36-74-2.
Short title, §36-74-1.
Creation of boards, §36-74-3.
Criminal and civil proceedings.
Other enforcement methods, §36-74-30.
Definitions, §36-74-21.
Effective date of act, §36-74-20.
Expiration of terms, §36-74-22.
Fines.
Administrative fines, §36-74-26.
General powers, §36-74-25.
Hearing procedures, §36-74-24.
Legal counsel.
Appointment, §36-74-22.
Presentation of case before board, §36-74-24.
Liens.
Length of liens, §36-74-27.
Unpaid administrative fines, §36-74-26.
Membership of board, §36-74-22.
Notice.
Code enforcement officers.
Hearing and notice, §36-74-23.
Notification of violators, §36-74-23.
Form of notice required, §36-74-29.
Other enforcement methods, §36-74-30.
Public policy, §36-74-2.
Qualifications of members, §36-74-22.
Reappointment of members, §36-74-22.
Residency requirement, §36-74-22.
Residential rental property.
Inspections and investigations.
Probable cause required, §36-74-30.
Rulemaking authority, §36-74-25.
Short title, §36-74-1.
Terms of office, §36-74-22.
Violators of codes and ordinances.
Hearing procedures, §36-74-24.
Notice of code or ordinance violation, §36-74-23.

LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS —Cont'd
Violators of codes and ordinances —Cont'd
Repeat violators.
Defined, §36-74-21.
Notice and hearing, §36-74-23.
Time to correct violations, §36-74-23.

LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS ACT.
General provisions, §§36-74-1 to 36-74-50.
Short title, §36-74-1.

LOCAL GOVERNMENT EFFICIENCY ACT.
Generally, §§36-86-1 to 36-86-4.
Short title, §36-86-1.

LOCAL GOVERNMENT INVESTMENT POOL ACT.
General provisions, §§36-83-1 to 36-83-8.
Short title, §36-83-1.

LOCAL GOVERNMENT PUBLIC WORKS CONSTRUCTION LAW.
Local government bidding and contracting, §§36-91-1 to 36-91-95.
Short title, §36-91-1.

LOCAL LAWS.
Annexation by local act.
Copy of proposed legislation provided county governing authority, §36-36-6.
Effective date, §36-36-2.
Lease with nonprofit corporations.
Operation and management of recreational property.
Municipal corporations, §36-37-6.

LOCAL LEGISLATION.
Redevelopment.
Local law authorization for exercise of powers, §36-44-22.

LONG-TERM HEALTH CARE.
Employee records checks.
Exchange of national criminal history background information, §35-3-34.2.

LOTTERIES.
Georgia lottery corporation.
Kimberly's call.
Dissemination of alert information to customers at retail locations.
Development of method for notifying vendors, §35-3-190.
Mattie's call act.
Development and implementation of alert system.
Cooperation with bureau, §35-3-172.
Dissemination of alert information to customers at retail locations.
Development of method for notifying vendors, §35-3-178.

M

MACADAMIZING.
Municipal corporations.
Street improvements.
Definitions.
Certain definitions to include, §36-39-1.

MADE IN GEORGIA PROGRAM.
Local government purchasing preferences, §36-84-1.

MAIL.
Annexation.
Arbitration of annexation disputes.
Notice of annexation, §36-36-111.
Municipal or county governing authorities.
Certified mail return receipt requested.
Service of notice, §36-36-9.
Local government code enforcement boards.
Certified mail or statutory overnight delivery.
Form of notice required, §36-74-29.

MAILBOX RULE.
Municipal annexation hearings, §36-36-36.
Notices of allocations, §36-82-185.

MALFEASANCE.
Law enforcement officers.
Liability, §35-1-7.

MALFEASANCE —Cont'd
Redevelopment.
Prohibited transactions and interests of public employees.
Violations constituting misconduct in office, §36-44-21.

MANDAMUS.
Counties.
Building, electrical and other codes.
Violations, §36-13-10.

MAPS AND PLATS.
Annexation.
Application by 100 percent of landowners.
Identification of annexed property, §36-36-21.
Municipality identification of annexed area, §36-36-3.
Resolution and referendum.
Map of annexed territory, §36-36-59.

MARIJUANA.
Municipal courts.
Possession of marijuana.
Fines and forfeitures.
Retention by municipalities, §36-32-6.
Jurisdiction, §36-32-6.
Transfer of cases, §36-32-6.
Possession.
Municipal courts, §36-32-6.

MARKET-PRICING MECHANISMS.
Municipal corporations.
Revenue bonds.
Interest rates may include, §36-41-8.

MASTERS.
Special masters.
Annexation authority to set fair market value, §36-36-7.
Zoning authority, §36-67A-5.

MASTURBATION.
Electronically furnishing obscene materials to minors, §35-3-4.1.

MATTIE'S CALL ACT, §§35-3-170 to 35-3-180.
Activation of alert system.
Criteria, §35-3-176.
Verification that criteria have been met, §35-3-177.
Request for activation, §35-3-177.
Termination, §35-3-179.
Agencies.
Obligations of participating agencies, §35-3-178.

MATTIE'S CALL ACT —Cont'd
Area of alert, §35-3-176.
Coordinator of alert system, §35-3-173.
Criteria for activating alert system, §35-3-176.
Verification that criteria have been met, §35-3-177.
Definitions, §35-3-171.
Development and implementation of statewide alert system, §35-3-172.
Recruitment of assistance in developing and implementing the alert system, §35-3-175.
Directives.
Director to issue, §35-3-173.
Disabled adults.
Development and implementation of statewide alert system, §35-3-172.
Termination of alert with respect to particular disabled adult, §35-3-179.
Elopement of disabled person from personal care home or assisted living community.
Reporting to local police, time, §35-3-174.
Forms.
Director to prescribe, §35-3-173.
Immunity for dissemination of alert information, §35-3-180.
Local law enforcement agencies.
Activation of alert system.
Criteria, §35-3-176.
Verification that criteria have been met, §35-3-177.
Request for activation, §35-3-177.
Development and implementation of alert system.
Cooperation with bureau, §35-3-172.
Lottery corporation.
Development and implementation of alert system.
Cooperation with bureau, §35-3-172.
Dissemination of alert information to customers at retail locations.
Development of method for notifying vendors, §35-3-178.
Participating agencies, obligations, §35-3-178.
Recruitment of assistance in developing and implementing the alert system, §35-3-175.
Rulemaking authority, §35-3-173.
Short title, §35-3-170.

MATTIE'S CALL ACT —Cont'd
Termination of alert with respect to particular disabled adult, §35-3-179.
Title of act, §35-3-170.

MAYOR.
Annexation.
Identification of annexed territory.
Duty of mayor to file, §36-36-59.
Cemetery or burial lots.
Conveyance to mayor and council of municipal corporation in trust, §36-37-4.
Defined.
Urban redevelopment, §36-61-2.
Recreation systems.
Governing body.
Defined as including, §36-64-1.
Recreation board.
Appointment, §36-64-5.
Street improvements.
Governing body.
Defined as including, §36-39-1.
Urban redevelopment agency.
Appointment, §36-61-18.
Urban residential finance authorities.
Appointments by mayor, §36-41-4.

MAYOR PRO TEMPORE.
Municipal courts.
Appointment to preside over court in absence of mayor or recorder, §36-32-1.

MAYORS' COURT.
References to mayor's court deemed to refer to municipal courts, §36-32-1.

MEDIATION.
Annexation.
Arbitration of annexation disputes, §§36-36-110 to 36-36-119.
Disputes over rezoning of annexed property, §36-36-11.
Zoning.
Disputes over rezoning of annexed property, §36-36-11.

MEDICAL EXAMINERS.
Forensic sciences division, §35-3-153.

MENTAL HEALTH.
Crime information center.
Disclosure of exonerated first offender's criminal record.
Employment with mental health facility, §35-3-34.1.

MENTAL HEALTH —Cont'd
Missing persons.
Investigation for missing person by law enforcement agency, §35-1-8.

MERGER.
Local government.
Merger of municipal government with county, §§36-68-1 to 36-68-4.
Municipal home rule.
Local act or general law, §36-35-2.

METERS.
Parking meters.
Local government revenue bonds.
Grant of powers as to undertakings, §36-82-62.
Receivers.
Powers of receiver as to parking meters, §36-82-68.

METHANE.
County and municipal recreation systems.
Assessment of methane presence prior to land acquisition, §36-80-18.

MILITARY AFFAIRS.
County historical containers.
Deposit of documents relating to soldiers and surviving spouses, §36-16-3.
Local government.
Land near military installations.
Planning and zoning decisions, §36-66-6.
Timber sales from military installations and facilities.
Allocation and expenditure of proceeds, §36-80-15.
Militia.
Districts, §§36-2-1 to 36-2-4.
Zoning.
Land near military installations, §36-66-6.

MILITIA.
Districts, §§36-2-1 to 36-2-4.
Addition, consolidation or abolition, §§36-2-3, 36-2-4.
Division of county into, §36-2-1.
Minimum requirements, §36-2-2.

MILLAGE RATES.
Redevelopment.
Bond issues.
Tax allocation bonds, §36-44-15.

MINORS.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Electronically furnishing obscene material, §35-3-4.1.
Exploitation.
Computer on-line service or internet service.
Soliciting, seducing, luring or enticing child, §35-3-4.1.
Kiddie porn, §35-3-4.1.
Missing children.
Information center.
General provisions, §§35-3-80 to 35-3-85.
Obscene telephone contact, §35-3-4.1.
On-line service or internet service.
Soliciting, seducing, luring or enticing child, §35-3-4.1.
Sexual exploitation, §35-3-4.1.
Computer on-line service or internet service.
Soliciting, seducing, luring or enticing child, §35-3-4.1.
Sexual offenses.
Computer or electronic pornography and child exploitation, §35-3-4.1.

MISDEMEANORS.
Adult bookstores and movie houses.
Restriction to certain areas by local governments.
Violations of restrictions, §36-60-3.
Burglar alarms.
Local governments.
Installation, service, sale, etc., §36-60-12.
Business licenses.
Evidence of state licensure before issuance.
False or misleading evidence, §36-60-6.
Cemeteries.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located.
Violations of provisions, §36-72-16.
Counties.
Building, electrical and other codes.
Violations, §36-13-12.
Destruction or damaging of county building or its appurtenances or furniture, §36-9-11.

MISDEMEANORS —Cont'd
Counties —Cont'd
Grants of state funds.
Roads and maintenance.
Tax credits.
False claiming or certification by taxpayer, §36-17-23.
Speculation in county orders by county officer, §36-1-13.
County surveyors.
False survey, §36-7-16.
County treasurers.
County orders.
Purchase at less than full value or refusal to pay order, §36-6-28.
DNA analysis of persons convicted of felony offenses.
Unlawful dissemination of information, §35-3-164.
DNA analysis of persons convicted of felony offenses (eff 1/1/2013).
Unlawful dissemination of information, §35-3-164.
Electronic security systems.
Local governments.
Installation, service, sale, etc., §36-60-12.
Fire alarms.
Local governments.
Installation, service, sale, etc., §36-60-12.
High and aggravated nature.
Abandoned cemeteries and burial ground violations, §36-72-16.
Licenses.
Investigation of business for issuance of county or municipal license.
Certain persons prohibited from investigating.
Violation of prohibition, §36-60-9.
Motor vehicles.
Self-service motor fuel dispensing pumps.
Operation without license or attendant, §36-60-1.
Municipal corporations.
Grants of state funds.
Capital outlay items.
Certificate showing eligibility for grant.
Signing false certificate, §36-40-42.
Public purposes.
Certificate showing eligibility for grant.
Signing false certificate, §36-40-22.

MISDEMEANORS —Cont'd
Municipal courts.
Jurisdiction, §36-32-10.2.
Radios.
Wavelength of radio system adopted by department of public safety or Georgia bureau of investigation.
Unauthorized use, §35-1-5.
Trespass.
Municipal court jurisdiction, §36-32-10.1.
Zoning.
Conflicts of interest, §36-67A-4.

MISSING CHILDREN.
Information center, §§35-3-80 to 35-3-85.
Bureau of investigation.
Sending information to center, §35-3-84.
Definitions, §35-3-80.
Duties, §35-3-82.
Established, §35-3-81.
Law enforcement agencies.
Duties, §§35-3-83, 35-3-84.
Missing child report, §35-3-83.
Defined, §35-3-80.
Powers, §35-3-85.
Registration of related organizations, §35-3-85.
Responsibilities, §35-3-82.
Staff, §35-3-81.
Supervisor, §35-3-81.

MISSING PERSONS.
Disabled adults.
Statewide alert system, §§35-3-170 to 35-3-180.
Identification.
Information assisting in.
Duties of law enforcement agencies, §35-1-8.
Mattie's call act, §§35-3-170 to 35-3-180.
Missing children information center, §§35-3-80 to 35-3-85.
Statewide alert system for missing disabled adults, §§35-3-170 to 35-3-180.

MOBILE TELEPHONES.
Computer or electronic pornography and child exploitation, §35-3-4.1.

MOBILE TELEPHONES —Cont'd
Identity fraud.
Compelling production of electronic communications records, §35-3-4.1.

MONOPOLIES.
Cable television.
Competition among providers, §§36-90-1 to 36-90-8.
Local government.
Immunity from antitrust liability, §§36-65-1, 36-65-2.

MORTGAGES.
Urban residential finance authorities.
Definition of mortgage, §36-41-3.
Purchase of mortgages or participations therein, §36-41-7.

MOTION PICTURES.
Child sexual exploitation, §35-3-4.1.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Public safety nomenclature act, §§35-2-80 to 35-2-88.

MOTOR VEHICLE INSURANCE.
Municipal courts.
Operation of motor vehicle without effective insurance.
Fines and forfeitures.
Retention by municipality, §36-32-7.
Jurisdiction, §36-32-7.
Transfer of cases, §36-32-7.

MOTOR VEHICLES.
Burglary.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Capitol police division.
Enforcement of parking and traffic laws, §35-2-122.
Off-duty law enforcement officers.
Use of vehicles, §35-2-123.
Claims against local government entities.
Waiver of immunity, §§36-92-1 to 36-92-5.
Commissions.
Decal or seal on vehicles owned or leased by local government, §36-80-20.

MOTOR VEHICLES —Cont'd
Contracts.
Junked motor vehicles.
Removal.
Local governments, §36-60-4.
Counties.
Claims against local government entities.
Waiver of immunity, §§36-92-1 to 36-92-5.
Government owned or leased vehicles.
Decal or seal, §36-80-20.
Crime information center.
Stolen motor vehicles and license plates.
Reporting requirements.
Effect, §35-1-4.
Criminal offenses.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Department of public safety.
Motor carrier compliance division.
Off-duty use of department vehicles, §35-2-101.
Weight inspectors, §35-2-102.
Motor carrier compliance enforcement division.
Off-duty use of department vehicles, §35-2-101.
Weight inspectors, §35-2-102.
Dismantled vehicles.
Junked vehicles.
Removal, §36-60-4.
Junked motor vehicles.
Removal.
Local governments, §36-60-4.
Jurisdiction.
Municipal courts.
Operation without certificate of emission inspection, §36-32-8.
Operation without effective insurance, §36-32-7.
Law enforcement officers.
Stolen motor vehicles and license plates.
Reporting, §35-1-4.
Traffic law enforcement.
Nomenclature of municipal and county police departments, §35-10-11.

MOTOR VEHICLES —Cont'd
License plates.
Decals.
Local government owned or leased vehicles, §36-80-20.
Stolen license plates.
Reporting, §35-1-4.
Local government.
Decal or seal on vehicles owned or leased by local government, §36-80-20.
Junked motor vehicles.
Removal, §36-60-4.
Self-service motor fuel dispensing pumps.
Licensing, §36-60-1.
Waiver of immunity for motor vehicle claims, §§36-92-1 to 36-92-5.
Construction and interpretation.
Effective date of provisions, §36-92-5.
Definitions, §36-92-1.
Effective date of chapter, §36-92-5.
Jurisdiction.
Superior court wherein entity lies, §36-92-4.
Negligent use of motor vehicle, §36-92-2.
No employee liability, §36-92-3.
Pleadings.
Party defendants, §36-92-3.
Punitive or exemplary damages, §36-92-4.
Recovery of interest, §36-92-2.
Scope of employment.
Criteria for liability, §36-92-2.
Settlement constitutes bar, §36-92-3.
Sources for payment of settled claims, §36-92-4.
Waiver of sovereign immunity, §36-92-2.
Witnesses.
Local government officer or employee as witness, §36-92-3.
Workers' compensation.
No waiver of remedy under act, §36-92-3.
Municipal corporations.
Claims against local government entities.
Waiver of immunity, §§36-92-1 to 36-92-5.
Decal or seal on vehicles owned or leased by local government, §36-80-20.

MOTOR VEHICLES —Cont'd
Municipal courts.
Operation without certificate of emission inspection.
Fines and forfeitures.
Retention by municipality, §36-32-8.
Jurisdiction, §36-32-8.
Transfer of cases, §36-32-8.
Operation without effective insurance.
Fines and forfeitures.
Retention by municipalities, §36-32-7.
Jurisdiction, §36-32-7.
Transfer of cases, §36-32-7.
Ordinances.
Junked motor vehicles.
Removal, §36-60-4.
Police.
High-speed police chases, §35-1-14.
Political subdivisions.
Decal or seal on vehicles owned or leased by local government, §36-80-20.
Regional commissions.
Decal or seal on vehicles owned or leased by local government, §36-80-20.
Reports.
Stolen motor vehicles and license plates, §35-1-4.
Schools and education.
Decal or seal on vehicles owned or leased by independent school system, §36-80-20.
Self-service motor fuel dispensing pumps.
Local licenses.
Generally, §36-60-1.
Operation without license or attendant.
Misdemeanor, §36-60-1.
State patrol.
Enforcement of motor vehicle laws, §35-2-33.
Off-duty use of motor vehicles by uniform division, §35-2-56.
Retired unmarked pursuit cars.
Use for training, §35-2-57.
Sale of surplus vehicles toward purchase of new vehicles, §35-2-58.
Theft.
Reports.
Stolen vehicles and license plates, §35-1-4.

MOTOR VEHICLES —Cont'd
Trespass.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Weight and size of vehicles and loads.
Motor carrier compliance division, department of public safety.
Weight inspectors, §35-2-102.
Motor carrier compliance enforcement division, department of public safety.
Weight inspectors, §35-2-102.

MULTIFAMILY DWELLINGS.
Georgia allocation system.
Definition of multifamily housing bond, §36-82-182.

MUNICIPAL AND COUNTY POLICE DEPARTMENTS' NOMENCLATURE ACT.
Generally, §§35-10-1 to 35-10-11.
Short title, §35-10-1.

MUNICIPAL BONDS, §§36-38-1 to 36-38-23.
Compromise of bonded debt.
Authorized, §36-38-20.
Dissenting creditors.
Rights not prejudice, §36-38-20.
New bonds.
Amount, §36-38-21.
Issuance for outstanding bonds, §36-38-21.
Ordinances providing for, §36-38-22.
Seeking funds for redemption of.
Ordinances creating, §36-38-23.
Ordinances creating sinking funds for redemption of new bonds, §36-38-23.
Ordinances providing for issuance and exchange of bonds, §36-38-22.
Interest.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Investments.
Registration of bonds in which municipal funds invested in name of municipal corporation, §36-38-3.
Tax levy to pay bonded indebtedness.
Funds acquired by, §36-38-1.

MUNICIPAL BONDS —Cont'd
Powers of municipal corporations.
Financing of facilities and services, §36-34-6.
Private activity bonds.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.
Registration, §§36-38-3, 36-38-4.
Repayment obligations.
Local government and political subdivisions, §§36-82-140 to 36-82-142.
Retirement of earlier municipal bonds.
Sale of bonds and use of proceeds for, §36-38-2.
Revenue bonds.
Local government and political subdivisions.
General provisions, §§36-82-60 to 36-82-85, 36-82-100.
Sinking fund.
Sale of bonds and use of proceeds for retirement of earlier municipal bonds, §36-38-2.
Street improvement bonds, §§36-39-25 to 36-39-27.
Taxation.
Levy to pay bonded indebtedness.
Investment of funds acquired by, §36-38-1.
Validation.
Local government and political subdivisions.
General provisions, §§36-82-20 to 36-82-47.

MUNICIPAL CORPORATIONS.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Actions.
Injury to person or property.
Written demand as prerequisite to action against municipality, §36-33-5.
Airports.
Powers as to certain buildings and facilities, §36-34-3.
Alarms.
Installation, service, sale, etc., §36-60-12.
Alcoholic beverages.
New municipal corporation created by local act.
Local power to license and regulate alcoholic beverages, §36-31-7.

MUNICIPAL CORPORATIONS —Cont'd
Aliens.
Immigration sanctuary policies prohibited, §36-80-23.
Annexation.
General provisions, §§36-36-1 to 36-36-92.
Residence qualifications for officers.
Inclusion of residency in annexed territory in computing period of residence, §36-30-5.
Ante litem notice.
Actions for injury to person or property.
Written demand as prerequisite, §36-33-5.
Appropriations.
New municipal corporation created by local act.
Appropriation of funds for grants or loans, §36-31-10.
Attorney general.
New municipal corporation created by local act.
Preclearance responsibilities, §36-31-6.
Audits.
Grants of state funds.
Capital outlay items.
Submission of annual audit to state auditor, §36-40-46.
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.
New municipal corporation created by local act.
Special service districts divided into noncontiguous areas, §36-31-12.
Authorities.
County and municipal development authorities.
General provisions, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Downtown development authorities.
General provisions, §§36-42-1 to 36-42-16.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.
Urban residential finance authorities.
General provisions, §§36-41-1 to 36-41-13.

MUNICIPAL CORPORATIONS —Cont'd
Backdated licenses, permits, or authorizing documents.
Issuance prohibited, §36-60-26.
Bankruptcy.
Not authorized to seek relief from payment of debts, §36-80-5.
Bids and bidding.
Sale of property, §36-37-6.
Bond issues.
Commercial paper notes.
Governmental entity authorized to issue bonds, notes or certificates.
Definitions, authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
General provisions, §§36-38-1 to 36-38-23.
Interest.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Private activity bonds.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.
Repayment obligations.
Local government and political subdivisions, §§36-82-140 to 36-82-142.
Revenue bonds.
Local government and political subdivisions.
General provisions, §§36-82-60 to 36-82-85, 36-82-100.
Validation.
Local government and political subdivisions.
General provisions, §§36-82-20 to 36-82-47.
Botanical gardens.
Leases and contracts for operation and maintenance.
Municipal corporations having population of more than 300,000, §36-34-5.2.
Boundaries.
Annexation.
General provisions, §§36-36-1 to 36-36-92.
Budgets.
Electronic transmission of budgets, §36-80-21.

MUNICIPAL CORPORATIONS —Cont'd
Budgets —Cont'd
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.
Burglar alarms.
Installation, service, sale, etc., §36-60-12.
Business license, occupational tax certificate, other document required to operate business.
Evidence of state licensure before issuance, §36-60-6.
Federal work authorization program.
Evidence of authorization use upon renewal, §36-60-6.
Cable television.
Competition among providers, §§36-90-1 to 36-90-8.
Consumer choice for television act, §§36-76-1 to 36-76-11.
Regulation generally, §§36-18-1 to 36-18-5.
Cemeteries.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Disposition of municipal property generally, §36-37-6.
Trusts and trustees.
Funds donated to cemetery.
Municipal corporation as trustee of, §36-37-5.
Receipt of cemetery or burial lots in trust, §36-37-4.
Charters.
Amendment.
Powers of municipal corporations.
Effect of provisions upon amendment, §36-34-8.
Revocation.
Inactive municipality, §36-30-7.1.
Surrender of corporate charter, §36-30-7.
City business improvement districts.
General provisions, §§36-43-1 to 36-43-9.
City clerks.
Training courses, §36-45-20.
City courts.
Municipal courts, §§36-32-1 to 36-32-40.
Claims against local government entities.
Motor vehicle claims.
Waiver of immunity, §§36-92-1 to 36-92-5.

MUNICIPAL CORPORATIONS
—Cont'd
Clinics.
Power to establish facilities and services, §36-34-4.
Code of ordinances and resolutions.
General codification, §36-80-19.
Commercial paper notes.
Authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
Computers.
Failure or malfunction of computer software.
Immunity from liability for losses, §36-60-20.
Conflicts of interest.
Governing authorities.
Voting upon questions by interested members, §36-30-6.
Conservation.
Nonprofit resource conservation and development councils.
Selling or granting real or personal property to, §36-37-6.
Consolidation of municipal and county governments.
Separate approval by referenda, §36-60-16.
Contracts.
Public utilities, §36-30-3.
Succeeding councils.
Effect of certain contracts on, §36-30-3.
Toll roads and toll bridges.
Construction and operation of private toll roads and bridges, §36-60-21.
Use, operation or management of property.
Charter not providing authorization, §36-37-6.
Counties.
Portion of city within county.
Services in.
Annual meeting and agreement between county and city representatives, §36-60-10.
Courts.
Municipal courts generally, §§36-32-1 to 36-32-40.
Damages.
Immunity from liability, §36-33-1.

MUNICIPAL CORPORATIONS
—Cont'd
Debts.
Not authorized to seek relief from payment of debts, §36-80-5.
Definitions.
City business improvement districts, §36-43-3.
Downtown development authorities, §36-42-3.
Grants of state funds, §§36-40-21, 36-40-40.
Municipal training, §36-45-3.
Redevelopment, §36-44-3.
Street improvements, §36-39-1.
Urban residential finance authorities, §36-41-3.
Department of community affairs.
Inactive municipalities.
Filing of certification of inactive status, §36-31-2.
Development.
County and municipal development authorities, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Downtown development authorities, §§36-42-1 to 36-42-16.
Impact fees, §§36-71-1 to 36-71-13.
Redevelopment powers generally, §§36-44-1 to 36-44-23.
Resource recovery development authorities, §§36-63-1 to 36-63-11.
Transfer of development rights, §36-66A-2.
Definitions, §36-66A-1.
Urban redevelopment, §§36-61-1 to 36-61-19.
Urban residential finance authorities, §§36-41-1 to 36-41-13.
Dispatch centers, §36-60-19.
Disposition of property, §36-37-6.
County governing authority disposing of property belonging to county, §36-9-2.
Districts.
City business improvement districts, §§36-43-1 to 36-43-9.
Downtown development authorities, §§36-42-1 to 36-42-16.
Easements.
Property used for recreational purposes.
Sale, exchange, lease or grant by certain municipalities, §36-37-6.1.

MUNICIPAL CORPORATIONS —Cont'd
Elections.
Public utilities.
Sale, lease or other disposition of plants or properties, §§36-37-8 to 36-37-10.
Ballot, §36-37-9.
Notice, §36-37-8.
Vote required, §36-37-10.
Electronic security systems.
Installation, service, etc., §36-60-12.
Emergencies.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.
Eminent domain.
Urban redevelopment.
Requirements to exercise power, §36-61-3.1.
English language.
Signs for privately owned businesses.
Use of language other than English not to be restricted, §36-35-6.1.
Executions.
Exemption of municipal property, §36-33-6.
Exemptions from levy and sale.
Property of municipal corporations, §36-33-6.
Federal programs.
Authority to participate in, §§36-87-1, 36-87-2.
Finance.
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.
Fire alarms.
Installation, service, sale, etc., §36-60-12.
Firefighters.
Volunteer firefighters, §36-60-23.
Fire stations.
Municipality control of county fire stations, §36-31-11.1.
Fireworks.
Prohibition of sale or services, restrictions, §36-60-24.
Franchises.
Public utilities.
Powers to grant franchises, §36-34-2.
Gifts.
Acceptance of donations or gifts, §36-37-2.

MUNICIPAL CORPORATIONS —Cont'd
Gifts —Cont'd
Public purposes.
Authorization of devises, gifts and grants for, §36-37-1.
Trustees for donated or gifted property.
Authority of municipal corporations to serve as, §36-37-3.
Governing authorities.
Compensation of members, §36-35-4.
Conflicts of interest.
Voting upon questions by interested members, §36-30-6.
Multiple office-holding by members, §36-30-4.
Property.
Discretion in management and disposition, §36-30-2.
Succeeding councils.
Ordinances not to bind, §36-30-3.
Training elected members.
General provisions, §§36-45-1 to 36-45-9.
Vacancies.
Special elections to fill.
All seats vacant, §36-30-13.
Governor.
New municipal corporation created by local act.
Appointment of interim representatives, §36-31-8.
Grants of state funds, §§36-40-1 to 36-40-46.
Capital outlay items, §§36-40-40 to 36-40-46.
Allocation of funds.
Computation, §36-40-44.
Audits.
Submission of annual audit to state auditor, §36-40-46.
Authorized, §36-40-41.
Certificate showing eligibility for grant, §36-40-42.
Failure to file.
Effect, §36-40-43.
Filing, §36-40-43.
Form, §36-40-42.
Signing, §36-40-42.
Computation of allocation of funds, §36-40-44.
Definition of municipal corporation, §36-40-40.
Generally, §36-40-41.

MUNICIPAL CORPORATIONS —Cont'd
Grants of state funds —Cont'd
Capital outlay items —Cont'd
Payment of funds, §36-40-45.
Use of funds, §36-40-45.
Historical preservation.
Repairs on facilities of historical value, §36-40-1.
Public purposes, §§36-40-20 to 36-40-25.
Allocation of funds.
Computation, §36-40-24.
Certificate showing eligibility for grant, §36-40-22.
Failure to file.
Effect, §36-40-23.
Filing, §36-40-23.
Form, §36-40-22.
Signing, §36-40-42.
Computation of allocation of funds, §36-40-24.
Definition of municipal corporation, §36-40-21.
Intent of legislature, §36-40-20.
Legislative declaration, §36-40-20.
Payment of funds, §36-40-25.
Use of funds, §36-40-25.
Highways, roads and streets.
Municipal street improvements, §§36-39-1 to 36-39-34.
Historic preservation.
Grants of state funds for repairs on facilities of historical value, §36-40-1.
Home rule.
General provisions, §§36-35-1 to 36-35-8.
Hospitals.
Power to establish facilities and services, §36-34-4.
Housing.
Urban residential finance authorities, §§36-41-1 to 36-41-13.
Immigration sanctuary policies prohibited, §36-80-23.
Immunity.
Computer malfunction or failure, §36-60-20.
Damages, §36-33-1.
Discretionary act.
No liability for failure to perform, §36-33-2.
MUNICIPAL CORPORATIONS —Cont'd
Immunity —Cont'd
Motor vehicle claims.
Claims against local government entities.
Waiver of immunity, §§36-92-1 to 36-92-5.
Torts of police or other officers.
No liability for, §36-33-3.
Improvements.
City business improvement districts, §§36-43-1 to 36-43-9.
Municipal street improvements, §§36-39-1 to 36-39-34.
Inactive municipalities, §36-30-7.1.
Two-year inapplicability of provisions, §36-31-2.
Incorporation, §§36-31-1 to 36-31-5.
Certificate of existence of minimum standards, §36-31-5.
Eligibility standards.
Certificate of existence of minimum standards, §36-31-5.
Population, §36-31-3.
Use and subdivision of areas proposed to be incorporated, §36-31-4.
Intent of legislature, §36-31-1.
Legislative declaration, §36-31-1.
Population standards, §36-31-3.
Independent school systems.
Annexation by municipality.
Effective date for enrollment purposes, §36-36-2.
Commercial paper notes.
Authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
Industrial development area.
Selling real property in, §36-37-6.
Industrial parks.
Selling real property in, §36-37-6.
Insurance.
Immunity from liability for damages.
Waiver by purchase of liability insurance, §36-33-1.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Interest.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.

MUNICIPAL CORPORATIONS
—Cont'd
Interlocal cooperation act.
General provisions, §§36-69A-1 to 36-69A-9.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Interpretation and construction.
Powers.
Provisions declared general law, §36-34-8.
Supplemental nature, §36-34-7.
Use of certain terms, §36-30-1.
Investments.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Lake property no longer needed, disposition, §36-37-6.
Large municipalities.
Urban residential finance authorities.
General provisions, §§36-41-1 to 36-41-13.
Law enforcement officers.
Compensation of law enforcement officers.
Salary as sole basis, §36-30-9.
Torts of police or other officers.
Liability, §36-33-3.
Leases.
Multiyear lease, purchase or lease purchase contracts, §36-60-13.
Acceptance of property subject to contract for lease purchase or installment purchase, §36-60-15.
Nonprofit corporations.
Operation and management of recreation property, §36-37-6.
Public utilities.
Sale, lease or other disposition of plants or properties, §§36-37-7 to 36-37-10.
Use, operation or management of property.
Charter providing no authorization, §36-37-6.
Liability for acts or omissions, §§36-33-1 to 36-33-6.
Ante litem notice.
Action for injury to person or property.
Written demand as prerequisite, §36-33-5.

MUNICIPAL CORPORATIONS
—Cont'd
Liability for acts or omissions
—Cont'd
Failure to perform discretionary act, §36-33-2.
Immunity from liability for damages, §36-33-1.
Insurance.
Waiver of immunity by purchase of liability insurance, §36-33-1.
Motor vehicle claims.
Claims against local government entities.
Waiver of immunity, §§36-92-1 to 36-92-5.
Officers.
Personal liability, §36-33-4.
Torts, §36-33-3.
Torts of police or other officers, §36-33-3.
Written demand.
Prerequisite to action for injury to person or property, §36-33-5.
Libraries.
Powers.
Acquisition and operation of certain buildings and facilities, §36-34-3.
Lease agreements for providing of library services, §36-34-5.1.
Limitation of actions.
Actions for injury to persons or property.
Suspension of limitations, §36-33-5.
Local government code enforcement boards.
Generally, §§36-74-1 to 36-74-50.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Merger of municipal government with county, §§36-68-1 to 36-68-4.
Constitutional authority for provisions, §36-68-1.
County containing no municipality.
Conditions under which deemed a consolidated government, §36-68-4.
Enabling local law.
Mandatory features, §36-68-3.
Optional features, §36-68-2.
Purpose of provisions, §36-68-1.

MUNICIPAL CORPORATIONS —Cont'd
Motor vehicles.
Claims against local government entities.
Waiver of immunity, §§36-92-1 to 36-92-5.
Decal or seal on vehicles owned or leased by local government, §36-80-20.
Municipal courts.
General provisions, §§36-32-1 to 36-32-40.
Museums.
Selling real property for museum purposes, §36-37-6.
Narrow strips of land, selling, §36-37-6.
Natural resources.
Nonprofit resource conservation and development councils.
Selling or granting real or personal property to, §36-37-6.
New municipal corporation created by local act.
Alcoholic beverages.
Local power to license and regulate alcoholic beverages, §36-31-7.
Appropriations.
Grants or loans, §36-31-10.
Attorney general.
Preclearance responsibilities, §36-31-6.
County special districts.
Removal for local government services, §36-31-11.
Initial terms of office, §36-31-9.
Local governing authority.
Appointment of interim representatives by governor, §36-31-8.
Initial terms of office, §36-31-9.
Special service districts.
Noncontiguous areas, §36-31-12.
Transition period for governmental functions, §36-31-8.
Nonprofit corporations exempt from taxation.
Lease or contract with corporation.
Operation and management of property used for recreational purposes, §36-37-6.
Nonprofit resource conservation and development councils.
Selling or granting real or personal property to, §36-37-6.

MUNICIPAL CORPORATIONS —Cont'd
Notice.
Ante litem notice.
Action for injury to person or property.
Written demand as prerequisite, §36-33-5.
Public utilities.
Sale, lease or other disposition of plants or properties.
Intent to dispose of public utility, §36-37-8.
Notice, §36-37-8.
Sale of property, §36-37-6.
Officers.
Backdated licenses, permits, or other authorizing documents.
Issuance prohibited, §36-60-26.
Eligibility.
Members of councils or boards of aldermen.
Eligibility for other municipal offices, §36-30-4.
Residence.
Annexation.
Inclusion of residency in annexed territory in computing period of residence, §36-30-5.
Liability.
Personal liability, §36-33-4.
Torts of police or other officers.
Municipality not liable, §36-33-3.
Torts.
Liability.
Municipality not liable, §36-33-3.
Ordinances.
Codification.
Adoption of general codification by ordinance, §36-80-19.
Copies, furnishing, §36-80-19.
County law library.
Copy furnished to, §36-80-19.
Funds used to establish and maintain code, §36-15-7.
Additional costs collected in civil and criminal proceedings, §36-15-9.
General codification of ordinances and resolutions, §36-80-19.
Internet, availability on, §36-80-19.
Official citation of code, §36-80-19.
Municipal home rule, §36-35-3.
Succeeding councils.
Ordinances not to bind, §36-30-3.

MUNICIPAL CORPORATIONS —Cont'd
Ordinances —Cont'd
Violations.
Confinement of violators, §36-30-8.
Parks and recreation.
County and municipal recreation systems.
General provisions, §§36-64-1 to 36-64-15.
Devises, gifts and grants for parks.
Authorization, §36-37-1.
Easement over property used for recreational purposes.
Sale, exchange, lease or grant by certain municipalities, §36-37-6.1.
Lease or contract with nonprofit corporations exempt from taxation.
Operation and management of property used for recreational purposes, §36-37-6.
Municipality control of county parks, §36-31-11.1.
Powers as to certain buildings and facilities, §36-34-3.
Personal property.
Disposition, §36-37-6.
Petitions.
Public utilities.
Sale, lease or other disposition of plants or properties.
Petition objecting to, §36-37-8.
Surrender of corporate charter, §36-30-7.
Planning.
Coordinated and comprehensive planning by counties and municipalities.
General provisions, §§36-70-1 to 36-70-5.
Police.
Employment and training of peace officers.
General provisions, §§35-8-1 to 35-8-26.
Georgia peace officer standards and training act, §§35-8-1 to 35-8-26.
Police academy.
General provisions, §§35-4-1 to 35-4-9.
Powers, §§36-34-1 to 36-34-8.
Administration of government.
Powers relating to, §36-34-2.

MUNICIPAL CORPORATIONS —Cont'd
Powers —Cont'd
Botanical gardens.
Leases and contracts for operation and maintenance.
Municipal corporations having population of more than 300,000, §36-34-5.2.
Buildings and facilities, §36-34-3.
City business improvement districts, §36-43-4.
Design and rehabilitation standards, §36-43-8.
Financing of facilities and services, §36-34-6.
General law.
Provisions declared to be, §36-34-8.
Hospitals and clinics.
Establishment of facilities and services, §36-34-4.
Intent of legislature, §36-34-1.
Legislative declaration, §36-34-1.
Libraries, §§36-34-3, 36-34-5.1.
Local or special laws.
Enactment on subject matters covered by provisions, §36-34-8.
Redevelopment powers.
General provisions, §§36-44-1 to 36-44-23.
Supplemental nature of power, §36-34-7.
Water and sewage systems.
Acquisition and construction, §36-34-5.
Zoos.
Leases and contracts for operation and maintenance.
Municipal corporations having population of more than 300,000, §36-34-5.3.
Private activity bonds.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.
Property.
Acquisition.
Deferred payments for real property, §36-37-6.2.
Adjoining county.
Obtaining real property within adjoining county which will be exchanged for federal property, §36-60-18.

MUNICIPAL CORPORATIONS —Cont'd
Property —Cont'd
Disposition, §36-37-6.
County governing authority disposing of real property belonging to county, §36-9-2.
Executions.
Exemption from levy and sale, §36-33-6.
Governing authorities.
Discretion in management and disposition, §36-30-2.
Multiyear lease, purchase or lease purchase contracts, §36-60-13.
Acceptance of property subject to contract for lease purchase or installment purchase, §36-60-15.
Public utilities.
Sale, lease or other disposition of plants or properties, §§36-37-7 to 36-37-10.
Sale, §36-37-6.
Public safety and judicial facilities authorities, §§36-75-1 to 36-75-13.
Public utilities.
Annexation.
Application by owners of 60 percent of land and 60 percent of electors.
Requiring use of municipal owned utilities by residents of annexed territory, §36-36-40.
Power to grant franchises or make contracts, §36-34-2.
Sale, lease or other disposition of plants or properties.
Authorized, §36-37-7.
Ballots for election, §36-37-9.
Charter restrictions.
Effect, §36-37-7.
Election, §§36-37-8 to 36-37-10.
Ballot, §36-37-9.
Notice, §36-37-8.
Vote required, §36-37-10.
Notice.
Intent to dispose of public utility, §36-37-8.
Petition objecting to, §36-37-8.
Public works.
Regional facilities, §§36-73-1 to 36-73-4.
Real property.
Disposition, §36-37-6.
Recreational purposes.
Use or management of property for.
Lease or contract, §36-37-6.

MUNICIPAL CORPORATIONS —Cont'd
Recreation system.
County and municipal recreation system, §§36-64-1 to 36-64-15.
Recycling.
Collection and disposal of solid waste and recyclables.
Standards and procedures.
Authority of local government to adopt laws, rules or regulations establishing, §36-80-22.
Redevelopment.
Downtown development authorities, §§36-42-1 to 36-42-16.
Powers generally, §§36-44-1 to 36-44-23.
Urban redevelopment, §§36-61-1 to 36-61-19.
Referendum.
Consolidation of counties and municipalities.
Separate approval by referendum, §36-60-16.
Regional facilities.
Contracts for, §§36-73-1 to 36-73-4.
Relief from payment of debts.
Not authorized to seek, §36-80-5.
Reservoirs.
Water storage facility projects.
Local authorities and local governing authorities, §§36-91-100 to 36-91-102.
Resource conservation and development councils, nonprofit.
Selling or granting real or personal property to, §36-37-6.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.
Revenue bonds.
Local government and political subdivisions.
General provisions, §§36-82-60 to 36-82-85, 36-82-100.
Sale of personal or real property, §36-37-6.
Schools and education.
Independent school systems.
Annexation by municipality.
Effective date for enrollment purposes, §36-36-2.

MUNICIPAL CORPORATIONS —Cont'd
Schools and education —Cont'd
Independent school systems —Cont'd
Commercial paper notes.
Authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
Security systems.
Installation, service, sale, etc., §36-60-12.
Service delivery, §§36-70-20 to 36-70-28.
Service of process.
Powers relating to administration of government, §36-34-2.
Sewage systems.
Power to acquire and construct, §36-34-5.
Slums.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Sovereign immunity.
Motor vehicle claims.
Claims against local government entities.
Waiver of immunity, §§36-92-1 to 36-92-5.
Special districts.
New municipal corporation created by local act.
Removal from county special districts for local government services, §36-31-11.
Special service districts divided into noncontiguous areas, §36-31-12.
State aid.
Grants of state funds, §§36-40-1 to 36-40-46.
State facilities or authorities.
Selling or leasing real or personal property to, §36-37-6.
Street improvements.
Municipal street improvements.
General provisions, §§36-39-1 to 36-39-34.
Subdivision of land.
Incorporation.
Eligibility standards.
Use and subdivision of areas proposed to be incorporated, §36-31-4.
Surrender of corporate charter, §36-30-7.

MUNICIPAL CORPORATIONS —Cont'd
Taxation.
Annexation.
Application by owners of 60 percent of land and 60 percent of electors.
Municipal ad valorem taxes.
Applicability to annexed area, §36-36-38.
Bonds.
Levy of taxes to pay.
Investment of funds acquired, §36-38-1.
City business improvement districts.
Financing of districts, §36-43-6.
Segregation of funds, §36-43-7.
Powers of municipalities with respect to, §36-43-4.
Parks and recreation.
County and municipal recreation systems, §§36-64-8 to 36-64-10, 36-64-15.
Telecommunications towers.
Lease or contract of property for, §36-37-6.
Trading or exchanging real property, §36-37-6.
Training.
City clerks, §36-45-20.
Elected members of governing authorities, §§36-45-1 to 36-45-9.
Trusts and trustees.
Cemeteries.
Receipt of cemetery or burial lots in trust, §36-37-4.
Donated or gifted property.
Authority of municipal corporations to serve as trustees for, §36-37-3.
Funds donated to cemetery.
Municipal corporation as trustee of, §36-37-5.
Universities and colleges.
Streets adjacent to or through institutions of higher learning.
Closing in municipal corporations having population of 350,000 or more, §36-30-12.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.
Urban residential finance authorities.
General provisions, §§36-41-1 to 36-41-13.

MUNICIPAL CORPORATIONS —Cont'd
Vacancies on governing authority.
Special election to fill.
All seats vacant, §36-30-13.
Water supply.
Power to acquire and construct water systems, §36-34-5.
Water storage facility projects.
Local authorities and local governing authorities, §§36-91-100 to 36-91-102.
Water treatment systems.
Operated and maintained by private entities, §36-60-15.1.
Zoning.
Conflicts of interest, §§36-67A-1 to 36-67A-6.
Procedures generally, §§36-66-1 to 36-66-6.
Zoos.
Leases and contracts for operation and maintenance.
Municipal corporations having population of more than 300,000, §36-34-5.3.

MUNICIPAL COURTS, §§36-32-1 to 36-32-40.
Alcoholic beverages.
Minors.
Furnishing to or purchase and possession by persons under 21 years of age, §36-32-10.
Attorneys at law.
Right to counsel.
Criminal proceedings, §36-32-1.
Bonds, surety.
Appearance bonds.
Forfeiture.
Authority of municipal corporations to provide for, §36-32-4.
Clerks.
Training required, §36-32-13.
Council of municipal court judges, §36-32-40.
Criminal trespass.
Jurisdiction to try violations, §36-32-10.1.
Definitions.
Training council, §36-32-21.
Drug object transactions, cases involving.
Jurisdiction, §36-32-6.1.

MUNICIPAL COURTS —Cont'd
Establishment.
Authorized, §36-32-1.
Fines.
Imposition of fines, §36-32-5.
Retention of fines and forfeitures by municipality.
Alcoholic beverages.
Furnishing to or purchase and possession by persons under 21 years of age, §36-32-10.
Criminal trespass.
Jurisdiction to try violations, §36-32-10.1.
Marijuana possession cases, §36-32-6.
Motor vehicles.
Operation without certificate of emission inspection, §36-32-8.
Operation without effective insurance, §36-32-7.
Shoplifting, misdemeanor theft by, §36-32-9.
Shoplifting of $300 or less, §36-32-9.
Interpretation and construction.
Use of certain terms for court, §36-32-1.
Judges, §§36-32-2, 36-32-3.
Appointment, §36-32-2.
Council of municipal court judges, §36-32-40.
Licensed to practice law.
Qualifications to serve, §36-32-1.1.
Powers, §36-32-3.
Qualifications to serve, §36-32-1.1.
Training council, §§36-32-11, 36-32-20 to 36-32-27.
Jurisdiction.
Alcoholic beverages.
Furnishing to or purchase and possession by persons under 21 years of age, §36-32-10.
Criminal trespass.
Jurisdiction in counties without state court to try violations, §36-32-10.1.
Drug object transactions, cases involving, §36-32-6.1.
Littering offenses, §36-32-10.3.
Marijuana possession cases, §36-32-6.
Minors.
Alcoholic beverages.
Furnishing to or purchase and possession by persons under 21 years of age, §36-32-10.

MUNICIPAL COURTS —Cont'd
Jurisdiction —Cont'd
Misdemeanor cases, §36-32-10.2.
Motor vehicles.
Operation without certificate of emission inspection, §36-32-8.
Operation without effective insurance, §36-32-7.
Shoplifting.
Misdemeanor theft by, §36-32-9.
Theft of $300 or less, §36-32-9.
Trespass.
Criminal trespass, §36-32-10.1.
Littering offenses.
Jurisdiction, §36-32-10.3.
Marijuana.
Possession of marijuana.
Fines and forfeitures.
Retention by municipalities, §36-32-6.
Jurisdiction, §36-32-6.
Transfer of cases, §36-32-6.
Mayor pro tempore.
Selection, election or appointment to preside over court in absence of mayor, §36-32-1.
Motor vehicles.
Operation without certificate of emission inspection.
Fines and forfeitures.
Retention by municipality, §36-32-8.
Jurisdiction, §36-32-8.
Transfer of cases, §36-32-8.
Operation without effective insurance.
Fines and forfeitures.
Retention by municipalities, §36-32-7.
Jurisdiction, §36-32-7.
Transfer of cases, §36-32-7.
Municipalities.
Sessions held outside municipality, §36-32-12.
Outside municipality.
Sessions held outside municipality, §36-32-12.
Recorder pro tempore.
Selection, election or appointment to preside over court in absence of recorder, §36-32-1.
Right to counsel, §36-32-1.
Sentencing.
Punishments which may be imposed, §§36-32-1, 36-32-5.
Right to counsel, §36-32-1.

MUNICIPAL COURTS —Cont'd
Shoplifting.
Jurisdiction of misdemeanor theft by shoplifting, §36-32-9.
Theft of $300 or less.
Fines and forfeitures.
Retention by municipalities, §36-32-9.
Jurisdiction, §36-32-9.
Transfer of cases, §36-32-9.
Training council.
Citation of act.
Short title, §36-32-20.
Definitions, §36-32-21.
Duties, §36-32-26.
Establishment, §36-32-22.
Members, §36-32-22.
Oath of office, §36-32-23.
Reimbursement, §36-32-25.
Officers, §36-32-24.
Powers, §36-32-26.
Quorum, §36-32-24.
Records of training completed by judges, §36-32-11.
Reimbursement of members, §36-32-25.
Reports.
Annual report, §36-32-24.
Required training for judges, §§36-32-11, 36-32-27.
Exemptions, §36-32-27.
Title of act.
Short title, §36-32-20.

MUNICIPAL COURTS TRAINING COUNCIL ACT.
General provisions, §§36-32-20 to 36-32-27.
Short title, §36-32-20.

MUNICIPAL ELECTIONS.
Municipal home rule.
Reapportionment of election districts, §36-35-4.1.
Public utilities.
Sale, lease or other disposition of plants or properties, §§36-37-8 to 36-37-10.
Reapportionment of election districts, §36-35-4.1.
Municipal home rule, §36-35-4.1.
Street improvements.
Adoption of provisions, §36-39-2.
Voting rights act of 1965.
Submissions to United States department of justice pursuant to.
Attorney general to receive copy, §36-60-11.

MUNICIPAL HOME RULE ACT OF 1965.
General provisions, §§36-35-1 to 36-35-8.
Short title, §36-35-1.

MUNICIPAL POLICE.
Emergency response and vehicular pursuit policies.
Agencies to adopt, crossing jurisdictions, policies to address, failure to adopt, funding withheld, §35-1-14.
Employment and training of peace officers.
General provisions, §§35-8-1 to 35-8-26.
Georgia peace officer standards and training act, §§35-8-1 to 35-8-26.
High-speed police chases, §35-1-14.
Police academy.
General provisions, §§35-4-1 to 35-4-9.
TASERS and electronic control weapons.
Use, requirements, policies, establishment, training, §35-8-26.

MUNICIPAL STREET IMPROVEMENTS.
General provisions, §§36-39-1 to 36-39-34.

MUNICIPAL TRAINING ACT, §§36-45-1 to 36-45-9.
Citation of act.
Short title, §36-45-1.
City clerks, §36-45-20.
Committee of elected municipal officials.
Established to design, implement and administer course, §36-45-5.
Definitions, §36-45-3.
Election or appointment after January 1 of calendar year.
Guidelines and procedures to comply with requirements, §36-45-5.
Expenses.
Training of persons elected as members of municipal governing authority, §36-45-4.
Findings of legislature, §36-45-2.
Harold F. Holtz training institute.
Costs of operating and conducting, §36-45-5.
Course conducted by institute, §36-45-5.
Creation, §36-45-5.

MUNICIPAL TRAINING ACT —Cont'd
Harold F. Holtz training institute —Cont'd
Defined, §36-45-3.
Report on accomplishments of institute, §36-45-9.
Inability to attend or complete course.
Guidelines and procedures to comply with requirements, §36-45-5.
Legislative declaration, §36-45-2.
Municipal governing authorities.
Defined, §36-45-3.
Training of persons elected as, §36-45-4.
Report on accomplishments of institute, §36-45-9.
Title of act.
Short title, §36-45-1.

MURDER.
Alert system for unapprehended murder suspects, §35-3-190.
Kimberly's call.
Statewide alert system for unapprehended murder suspects, §35-3-190.
Unapprehended murder suspects, statewide alert system, §35-3-190.

MUSEUMS.
Municipality selling real property for museum purposes, §36-37-6.

MUTUAL AID ACT.
Georgia mutual aid act.
General provisions, §§36-69-1 to 36-69-10.
Short title, §36-69-1.

N

NAMES.
Counties, §36-1-1.
Governing authorities.
Official name, §36-5-20.
Law enforcement agencies.
Nomenclature of municipal and county police departments generally, §§35-10-1 to 35-10-11.

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT.
Criminal history information, §35-3-39.1.

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.
Crime information center.
Authority to provide records to FBI in conjunction with, §35-3-34.

NATURAL RESOURCES.
Municipal corporations.
Nonprofit resource conservation and development councils.
Selling or granting real or personal property to, §36-37-6.
Nonprofit resource conservation and development councils.
Municipal corporations.
Selling or granting real or personal property to, §36-37-6.
Planning.
Coordinated and comprehensive planning by counties and municipalities, §§36-70-1 to 36-70-5.
Resource recovery development authorities, §§36-63-1 to 36-63-11.

NEGLIGENCE.
Claims against local government entities.
Negligent use of motor vehicle, §36-92-2.
No employee liability, §36-92-3.

NEWSPAPERS.
Kimberly's call.
Recruitment of assistance in developing and implementing the alert system, §35-3-190.
Local government code enforcement boards.
Service of notice by publication or posting, §36-74-29.
Mattie's call act.
Recruitment of assistance in developing and implementing the alert system, §35-3-175.

NICS.
National instant criminal background check system.
Crime information center, providing information, §35-3-34.

NOMENCLATURE OF MUNICIPAL AND COUNTY POLICE DEPARTMENTS, §§35-10-1 to 35-10-11.

NONFEASANCE.
Crime information center.
Neglect or refusal of official to act as required by provisions, §35-3-39.

NONPROFIT CORPORATIONS.
Resource conservation and development councils.
Municipal corporations.
Selling or granting real or personal property to, §36-37-6.

NONPROFIT RESOURCE CONSERVATION AND DEVELOPMENT COUNCILS.
Municipal corporations.
Selling or granting real or personal property to, §36-37-6.

NONRESIDENTS.
Law enforcement officers.
Adjoining states.
Appointment of citizens as peace officers in certain cities, §35-8-19.

NORTH CAROLINA.
Law enforcement officers.
Fresh pursuit.
Authority of officers in fresh pursuit in state, §35-1-15.

NOTES.
Commercial paper notes.
Governmental entities.
Authority to issue, securing, renewal, reissuance, §36-82-241.
Definitions, §36-82-240.

NOTICE.
Ante litem notice.
Counties.
Time for presentation of claims against, §36-11-1.
Municipalities.
Actions for injury to person or property, §36-33-5.
Cable television.
Competition among providers.
Public hearings prior to granting authorization to public provider, §36-90-3.
City business improvement districts.
District plan.
Hearing on adoption, §36-43-5.
County governing authorities.
Authorizing service by officers, agents and employees, §36-5-26.

NOTICE —Cont'd
Crime information center.
Appeal of denial of request to modify or correct information, §35-3-37.
Purging, modifying or supplementing of criminal records.
Appeals, §35-3-37.
Restricted access to individual's criminal history record information, §35-3-37.
Homeowner tax relief grants.
Notice to taxpayer of reduction on tax bill, §36-89-4.
Local government.
Budgets and audits.
Budget hearing, §36-81-5.
Debts.
Unbonded debt.
Election for authorization, §36-80-11.
Regional facilities contracts.
Hearings, §36-73-2.
Local government code enforcement boards.
Code enforcement officers.
Hearing and notice, §36-74-23.
Notification of violators, §36-74-23.
Public works.
Local government bidding and contracting.
Payment bonds.
Notice of commencement, §36-91-92.
Redevelopment.
Redevelopment plan.
Public hearing on, §36-44-7.
Tax allocation districts.
Current taxable value of property within each district and tax allocation increment base, §36-44-10.
Urban redevelopment.
Disposal of real property in urban redevelopment area, §36-61-10.
Eminent domain.
Exercise of power, §36-61-9.
Urban redevelopment plan.
Hearing on, §36-61-7.
Special policemen.
Termination and revocation of appointment, §35-9-11.
Effect of filing and mailing of notice, §35-9-14.

NOTICE —Cont'd
Taxation.
Homeowner tax relief grants.
Notice to taxpayer of reduction on tax bill, §36-89-4.
Zoning.
Annexed property.
Notice to county governing authority, §36-36-11.
Zoning decisions.
Hearings on proposed local government zoning decisions, §36-66-4.

NOTICE OF APPEAL.
Criminal records.
Expungement, modification, etc., §35-3-37.

NUCLEAR POWER FACILITIES.
Criminal history information requested by facilities.
High priority placed on requests by crime information center, §35-3-30.

NUDITY.
Electronically furnishing obscene materials to minors, §35-3-4.1.
Sexually explicit nudity.
Adult bookstores and movie houses, §36-60-3.

NURSING HOMES.
Crime information center.
Disclosure of exonerated first offender's criminal record.
Employment with nursing home, §35-3-34.1.
Employee records checks.
Exchange of national criminal history background information, §35-3-34.2.

O

OATHS.
Annexation.
Arbitration of annexation disputes.
Arbitration panel, §36-36-114.
County treasurers.
Oath of office, §§36-6-2, 36-6-3, 36-6-5.
Grand jury.
Receipt and expenditure of money by county officers, §36-1-7.
Municipal courts training council.
Oath of office of members, §36-32-23.

OATHS —Cont'd
Special policemen.
Oath of office, §35-9-6.

OBJECTIONS.
Annexation.
Arbitration of annexation disputes.
Grounds and procedures for objection to annexation, §36-36-113.
Zoning or rezoning of annexed property, §36-36-11.

OBSCENE INTERNET CONTACT WITH A CHILD, §35-3-4.1.

OBSCENITY.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Electronically furnishing obscene material, §35-3-4.1.
Internet.
Obscene internet contact with a child, §35-3-4.1.
Minors.
Electronically furnishing obscene material, §35-3-4.1.
Materials harmful to minors, §35-3-4.1.
Obscene telephone contact, §35-3-4.1.
Telephones.
Obscene telephone contact, §35-3-4.1.

ON-LINE MESSAGING SERVICE.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Identity fraud.
Compelling production of electronic communication records, §35-3-4.1.

ON-LINE SERVICE.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Identity fraud.
Compelling production of electronic communication records, §35-3-4.1.

OPEN AND PUBLIC MEETINGS.
Cable television providers, §36-90-7.

OPEN RECORDS.
Cable television providers, §36-90-7.

ORDERS.
County governing authorities.
Authorizing service by officers, agents and employees, §36-5-26.

ORDINANCES.
Codification.
General codification, §36-80-19.
Adoption of general codification by ordinance, §36-80-19.
Copies, furnishing, §36-80-19.
County law library.
Copy furnished to, §36-80-19.
Funds used to establish and maintain code, §36-15-7.
Additional costs collected in civil and criminal proceedings, §36-15-9.
Internet, availability on, §36-80-19.
Official citation of code, §36-80-19.
Counties.
Codification.
General codification of ordinances and resolutions, §36-80-19.
Motor vehicles.
Junked motor vehicles.
Removal, §36-60-4.

ORGANS.
Legal organs.
Abandoned cemeteries.
Proposed development, §36-72-7.
Amendments to municipal charters, §36-35-3.
Bonds.
Local bond elections, §36-82-4.1.
Validation at show cause hearings, §36-82-22.
Disposal of municipal property, §36-37-6.
Elected public officials.
Raising of pay.
Publication of proposal, §36-35-4.
Georgia peace officer standards and training council.
Reimbursements to organs for personnel training, §35-8-7.
Law enforcement unit defined.
Organs included, §35-8-2.
Local government.
Annual audits required.
Publication where failure to do so, §36-81-7.
Peace officer training.
Speed detection device certification.
Required of police personnel, §35-8-12.
Revenue bonds.
Validation hearings, §36-82-76.
Sales of county real property, §36-9-3.

P

PALMISTRY.
Powers of county governing authority as to, §36-1-15.

PANDERING.
Georgia crime information center.
Powers, §35-3-33.

PAPER.
County treasurers.
Successor in office.
Delivery of papers to, §36-6-20.

PARAMEDICS.
Training.
Public safety training center, §§35-5-1 to 35-5-7.

PARAPHERNALIA.
Drug related objects.
Municipal court jurisdiction over cases involving drug object transactions, §36-32-6.1.

PARDONS AND PAROLES.
Board of pardons and paroles.
Public safety training center act.
Powers and authority of board not altered by act, §35-5-6.

PARKS AND RECREATION.
County and municipal recreation systems, §§36-64-1 to 36-64-15.
Applicability of provisions, §§36-64-13, 36-64-14.
Authority of governing bodies, §36-64-2.
Bond issues, §36-64-7.
Costs.
Payment, §36-64-11.
Establishment, maintenance and conduct of system not mandatory, §36-64-12.
Gifts.
Acceptance for recreation purposes, §36-64-6.
Governing bodies.
Defined, §36-64-1.
Powers, §§36-64-2 to 36-64-3.1.
Provision of system on own motion, §36-64-8.
Hydroelectric power.
Use of dam sites and adjacent lands for purpose of producing, §36-64-3.1.
Joint recreation systems, §36-64-4.
Petition for system, §36-64-8.

PARKS AND RECREATION —Cont'd
County and municipal recreation systems —Cont'd
Powers of governing bodies, §36-64-2.
Real property.
Assessment of environmental risks associated with land acquisition, §36-80-18.
Joint recreation systems, §36-64-4.
Powers of governing bodies, §36-64-2.
Recreation board.
Establishment, §36-64-5.
Funds.
Control, §36-64-11.
Gifts.
Acceptance for recreation purposes, §36-64-6.
Members, §36-64-5.
Powers and duties, §36-64-5.
Supervised recreation.
Designation of board to provide and conduct activities, §36-64-3.
Scope of provisions, §§36-64-13, 36-64-14.
Special acts of general assembly.
Recreation and playground commissions, boards and systems created by.
Provisions not applicable to, §36-64-14.
Supervised recreation.
Powers of governing bodies as to system, §36-64-3.
Taxation.
Collection of tax, §36-64-10.
Establishment of system with tax money following favorable vote, §36-64-9.
Levy of tax, §36-64-10.
Referendum on issue, §36-64-8.
Favorable vote.
Establishment of system with tax money upon, §36-64-9.
Removal of minimum or maximum tax, §36-64-15.
Gifts.
County and municipal recreation systems.
Acceptance of gifts, §36-64-6.
Municipal corporations.
Devises, gifts and grants for parks.
Authorization, §36-37-1.

PARKS AND RECREATION —Cont'd
Municipal corporations —Cont'd
Easement over property used for recreational purposes.
Sale, exchange, lease or grant by certain municipalities, §36-37-6.1.
Lease or contract with nonprofit corporations exempt from taxation.
Operation and management of property used for recreational purposes, §36-37-6.
Municipality control of county parks, §36-31-11.1.
Powers as to certain buildings and facilities, §36-34-3.

PAYMENT IN FULL.
Bonds.
Issued bonds.
Defined, §36-82-182.
Local bond issues.
Validation process, §36-82-75.
Street improvements.
Bonds, §36-39-23.

PEACE OFFICERS.
Academy.
General provisions, §§35-4-1 to 35-4-9.
Aliens.
Arrest of illegal aliens, §35-1-17.
Enforcement of immigration laws.
Cooperation and agreements with federal authorities, §35-1-17.
Transporting illegal aliens to federal facilities, §35-1-17.
Antiterrorism task force.
General provisions, §§35-3-60 to 35-3-65.
Bureau of investigation.
Crime information center.
General provisions, §§35-3-30 to 35-3-40.
General provisions, §§35-3-1 to 35-3-13.
Missing children information center.
General provisions, §§35-3-80 to 35-3-85.
Capitol police division, §§35-2-120 to 35-2-124.
County police.
General provisions, §§36-8-1 to 36-8-7.
Crime information center.
General provisions, §§35-3-30 to 35-3-40.

PEACE OFFICERS —Cont'd
Emergency response and vehicular pursuit policies.
Agencies to adopt, crossing jurisdictions, policies to address, failure to adopt, funding withheld, §35-1-14.
Employment and training.
General provisions, §§35-8-1 to 35-8-26.
Employment related information.
Defined, §35-8-8.
Disclosure.
Investigations for purpose of hiring, certifying, continuing certification, §35-8-8.
Georgia bureau of investigation.
Antiterrorism task force.
General provisions, §§35-3-60 to 35-3-65.
Georgia peace officer standards and training act, §§35-8-1 to 35-8-26.
Georgia state patrol.
General provisions, §§35-2-30 to 35-2-58.
High-speed police chases, §35-1-14.
Illegal aliens.
Arrest, §35-1-17.
Transporting to federal facilities, §35-1-17.
Immigration and customs laws.
Enforcement.
Cooperation and agreements with federal authorities, §35-1-17.
Memorandum of understanding with federal agencies.
Designated officers to be trained, authority of trained officers, §35-2-14.
Missing children.
Information center.
General provisions, §§35-3-80 to 35-3-85.
Public safety training center.
General provisions, §§35-5-1 to 35-5-7.
Special policemen.
General provisions, §§35-9-1 to 35-9-15.
State patrol.
General provisions, §§35-2-30 to 35-2-58.
TASERS and electronic control weapons.
Use, requirements, policies, establishment, training, §35-8-26.

PEACE OFFICERS —Cont'd
Terrorism.
Antiterrorism task force.
General provisions, §§35-3-60 to 35-3-65.
Trafficking persons for labor or sexual servitude.
Training officers investigating crimes involving, §35-1-16.
Weapons.
TASERS and electronic control weapons.
Use, requirements, policies, establishment, training, §35-8-26.

PEACE OFFICERS' STANDARDS AND TRAINING ACT.
General provisions, §§35-8-1 to 35-8-26.
Short title, §35-8-1.

PERFORMANCE BONDS.
Public works.
Local government bidding and contracting, §§36-91-70 to 36-91-72.

PERMITS.
Backdated permits.
Issuance by county or municipal officers or employees.
Prohibited, §36-60-26.

PERSONAL CARE HOMES.
Crime information center.
Disclosure of exonerated first offender's criminal record.
Employment with personal care home, §35-3-34.1.
Elopement of disabled person from home.
Reporting to local police, time, §35-3-174.

PERSONS WITH DISABILITIES.
Protection of disabled adults and elder persons.
Bureau of investigation, investigation of offenses, §35-3-4.

PETITIONS.
City business improvement districts.
District plan.
Adoption, §36-43-5.
Counties.
Change of boundaries, §36-3-1.

PETITIONS —Cont'd
Counties —Cont'd
Change or removal of county sites, §36-4-1.
Municipal corporations.
Public utilities.
Sale, lease or other disposition of plants or properties.
Petition objecting to, §36-37-8.
Surrender of corporate charter, §36-30-7.
Municipal home rule.
Charters.
Amendment, §36-35-3.
Ordinances, rules and regulations.
Amendment or repeal, §36-35-3.
Parks and recreation.
County and municipal recreation systems, §36-64-8.

PHOTOGRAPHS.
Child sexual exploitation, §35-3-4.1.
Computer or electronic pornography and child exploitation, §35-3-4.1.

PHRENOLOGY.
Counties.
Powers of county governing authorities as to, §36-1-15.

PICKETING.
State patrol.
Duty to suppress riots, labor strikes or picketing, §35-2-33.

PILOT RESTRICTION ACT.
Local government authorities.
Payments in lieu of taxes, §36-80-16.1.

PLANNING.
Coordinated and comprehensive planning by counties and municipalities, §§36-70-1 to 36-70-5.
Definitions, §36-70-2.
Department of community affairs database.
Participation in compiling, §36-70-4.
Governing bodies.
Defined, §36-70-2.
Powers, §36-70-3.
Legislative declaration, §36-70-1.
Powers of governing bodies, §36-70-3.
Purpose of provisions, §36-70-1.
Regional commissions.
Defined, §36-70-2.

PLANNING —Cont'd
Coordinated and comprehensive planning by counties and municipalities —Cont'd
Regional commissions —Cont'd
Municipality and county as members of, §36-70-4.
Zoning.
Powers of counties and municipal corporations not affected, §36-70-5.
Local government service delivery, §§36-70-20 to 36-70-28.

PLAYGROUNDS.
County and municipal recreation system, §§36-64-1 to 36-64-15.

PLEADINGS.
Claims against local government entities.
Party defendants, §36-92-3.

PLUMBING CODE.
Counties.
Building, electrical and other codes.
General provisions, §§36-13-1 to 36-13-12.

POLICE.
Academy.
General provisions, §§35-4-1 to 35-4-9.
Aliens.
Arrest of illegal aliens, §35-1-17.
Enforcement of immigration laws.
Cooperation and agreements with federal authorities, §35-1-17.
Transporting illegal aliens to federal facilities, §35-1-17.
Antiterrorism task force.
General provisions, §§35-3-60 to 35-3-65.
Bureau of investigation.
Crime information center.
General provisions, §§35-3-30 to 35-3-40.
General provisions, §§35-3-1 to 35-3-13.
Missing children information center.
General provisions, §§35-3-80 to 35-3-85.
Capitol police division, §§35-2-120 to 35-2-124.
Chiefs of police.
Designation and qualifications, §35-1-12.
Training requirements, §§35-8-20, 35-8-20.1.

POLICE —Cont'd
Chiefs of police —Cont'd
Volunteer emergency traffic director approval, §35-1-11.
County police.
General provisions, §§36-8-1 to 36-8-7.
Crime information center.
General provisions, §§35-3-30 to 35-3-40.
Crossing jurisdiction while in pursuit.
Emergency pursuit policies to address, §35-1-14.
Emergency response and vehicular pursuit policies.
Crossing jurisdictions during pursuit, policies to address, §35-1-14.
Employment and training.
General provisions, §§35-8-1 to 35-8-26.
Employment related information.
Defined, §35-8-8.
Disclosure.
Investigations for purposes of hiring, certifying or continuing certification, §35-8-8.
Georgia bureau of investigation.
Antiterrorism task force.
General provisions, §§35-3-60 to 35-3-65.
Georgia peace officer standards and training act, §§35-8-1 to 35-8-26.
Georgia state patrol.
General provisions, §§35-2-30 to 35-2-58.
High-speed police chases, §35-1-14.
Illegal aliens.
Arrest, §35-1-17.
Transporting to federal facilities, §35-1-17.
Immigration and customs laws.
Enforcement.
Cooperation and agreements with federal authorities, §35-1-17.
Memorandum of understanding with federal agencies.
Designated officers to be trained, authority of trained officers, §35-2-14.
Missing children.
Information center.
General provisions, §§35-3-80 to 35-3-85.
Public safety training center.
General provisions, §§35-5-1 to 35-5-7.

POLICE —Cont'd
Pursuit policies.
Crossing jurisdictions, policies to address, §35-1-14.
Special policemen.
General provisions, §§35-9-1 to 35-9-15.
State patrol.
General provisions, §§35-2-30 to 35-2-58.
TASERS and electronic control weapons.
Use, requirements, etc, §35-8-26.
Terrorism.
Antiterrorism task force.
General provisions, §§35-3-60 to 35-3-65.
Trafficking persons for labor or sexual servitude.
Training officers investigating crimes involving, §35-1-16.

POLICE ACADEMY, §§35-4-1 to 35-4-9.
Attendance not to be required, §35-4-9.
Availability of programs, §35-4-7.
Board of public safety.
Powers, §§35-4-4, 35-4-5, 35-4-7.
Superintendent.
Board to hire, §35-4-6.
Citation of act.
Short title, §35-4-1.
Coroners.
Training course.
Coroners and deputy coroners, §35-4-8.
Definitions, §35-4-2.
Department of public safety.
Assigned to department for administrative purposes, §35-4-3.
Gifts.
Acceptance by board, §35-4-5.
Property.
Acceptance of gifts, grants and donations by board, §35-4-5.
Site.
Selection by board, §35-4-4.
Superintendent, §35-4-6.
Title of act.
Short title, §35-4-1.
Training programs.
Availability, §35-4-7.
Coroners and deputy coroners, §35-4-8.
Not to supersede other programs, §35-4-9.

POLICE ACADEMY ACT.
General provisions, §§35-4-1 to 35-4-9.
Short title.
Georgia police academy act, §35-4-1.

POLICE CHAPLAINS.
Training and certification, §35-8-13.

POLICE COURTS.
References to police court deemed to refer to municipal courts, §36-32-1.

POLICE DOGS.
Certification of peace officers.
Applicants possessing special skills in training and handling of police dogs, §35-8-8.

POLITICAL SUBDIVISIONS.
Bankruptcy.
Not authorized to seek relief from payment of debts, §36-80-5.
Bond issues.
Private activity bonds.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.
Repayment obligations.
Local government and political subdivisions, §§36-82-140 to 36-82-142.
Revenue bonds.
Local government and political subdivisions, §§36-82-60 to 36-82-85, 36-82-100.
Validation.
Local government and political subdivisions.
General provisions, §§36-82-20 to 36-82-47.
Commercial paper notes.
Authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
Courts.
Municipal courts.
General provisions, §§36-32-1 to 36-32-40.
Debts.
Not authorized to seek relief from payment of debts, §36-80-5.
Development impact fees.
General provisions, §§36-71-1 to 36-71-13.
Emergencies.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.

POLITICAL SUBDIVISIONS —Cont'd
Interest.
Local government and political subdivisions.
Interest rates on obligations other than general obligation bonds, §§36-82-120 to 36-82-124.
Investments.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Motor vehicles.
Decal or seal on vehicles owned or leased by local government, §36-80-20.
Municipal courts.
General provisions, §§36-32-1 to 36-32-40.
Redevelopment.
Powers of counties and municipalities generally, §§36-44-1 to 36-44-23.
Relief from payment of debts.
Not authorized to seek, §36-80-5.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.
Taxation.
Evidence of indebtedness in anticipation of taxes, §36-80-2.

PORNOGRAPHY.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Kiddie porn, §35-3-4.1.

POSTMARKS.
Municipal annexation hearings, §36-36-36.
Notices of allocation, §36-82-185.

PRISONS AND PRISONERS.
Board of corrections.
Public safety training center act.
Powers and authority of board not altered by act, §35-5-6.
DNA sampling, collection, analysis.
Persons convicted of felony offenses, §§35-3-160 to 35-3-165.
Persons convicted of felony offenses (eff 1/1/2013), §§35-3-160 to 35-3-165.

PRISONS AND PRISONERS —Cont'd
Jails.
Fresh pursuit.
Persons arrested in course of fresh pursuit, §35-1-15.
Wardens.
Training, §35-8-20.

PRISON TERMS.
Cemeteries.
Abandoned cemeteries and burial grounds.
Development of land on which cemetery located.
Violations of provisions, §36-72-16.
Counties.
Unincorporated areas of counties.
Ordinances for governing and policing.
Maximum punishments, §36-1-20.
Municipal corporations.
Ordinance violations, §36-30-8.
Municipal home rule.
Limitations on home rule powers, §36-35-6.
Nomenclature of municipal and county police departments, §35-10-10.
Ordinance violations, §36-30-8.

PRIVATE ACTIVITY BONDS.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.

PRIVATE TOLL ROADS AND TOLL BRIDGES.
Contracts to construct and operate, §36-60-21.

PROBATE COURTS.
Fees and costs.
Judges.
County historical containers.
Filing of documents, §36-16-4.

PROBATION.
Conditions.
DNA samples from persons convicted of felony offenses.
Withdrawal of sample, §35-3-161.
DNA sampling, collection, analysis.
Persons convicted of felony offenses and placed on probation.
Generally, §§35-3-160 to 35-3-165.
Withdrawal of sample as condition of probation, §35-3-161.

PROBATION —Cont'd
DNA sampling, collection, analysis —Cont'd
Persons convicted of felony offenses and placed on probation (eff 1/1/2013).
Generally, §§35-3-160 to 35-3-165.
First offenders.
Criminal record.
When disclosure by crime information center allowed, §35-3-34.1.
Probation officers.
Training and certification of municipal probation officers, §35-8-13.1.

PRODUCTION OF DOCUMENTS AND THINGS.
Electronic communications records.
Identity fraud.
Compelling production, §35-3-4.1.
Sexual offenses against minors.
Compelling production, §35-3-4.1.
Identity fraud.
Computers or electronic devices.
Compelling production of electronic communication records, §35-3-4.1.
Sexual offenses against minors.
Computers or electronic devices.
Compelling production of electronic communication records, §35-3-4.1.

PROPERTY.
Cemeteries.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Criminal justice coordinating council.
Acceptance and use of gifts, grants and donations, §35-6A-9.
Development authorities.
Dissolution of authorities by operation of law.
Disposition of property, §36-62-13.
Powers of authorities, §§36-62-6, 36-62-7.
Development impact fees, §§36-71-1 to 36-71-13.
Police academy.
Acceptance of gifts, grants and donations by board, §35-4-5.
Public safety training center.
Board of public safety.
Acceptance of gifts, grants and donations, §35-5-3.

PROPERTY —Cont'd
State patrol.
Conveyance of property to, §§35-2-41, 35-2-41.1.
Trespass.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Zoning.
Conflicts of interest, §§36-67A-1 to 36-67A-6.
Procedures generally, §§36-66-1 to 36-66-6.

PROPERTY TAXES.
Real property.
Regional facilities contracts, §§36-73-1 to 36-73-4.

PROSECUTING ATTORNEYS.
Crime information center.
Restricted access to records, action against attorney declining to restrict, §35-3-37.
Immigration laws.
Enforcement.
Cooperation with federal authorities, §35-1-17.

PROTEST.
Highways, roads and streets.
Municipal streets.
Protest or objection, §36-39-3.

PUBIC AREA.
Adult bookstores and movie houses.
Sexual conduct.
Defined, §36-60-3.
Sexually explicit nudity, defined, §36-60-3.
Nudity.
Defined, §36-60-3.
Sexually explicit nudity, defined, §36-60-3.

PUBLICATION.
Cable television.
Competition among providers.
Notice of public hearings prior to granting authorization to public provider, §36-90-3.
Counties.
Boundaries.
Change of boundaries.
Notice of approval, §36-3-2.
Notice of intention to apply for, §36-3-1.
Financial statements.
Annual financial statement, §36-1-6.

PUBLICATION —Cont'd
Counties —Cont'd
Militia districts.
Addition, consolidation or abolition, §36-2-4.
Zoning.
Notice of hearing on zoning decision, §36-36-4.

PUBLIC CONTRACTS.
Counties.
Public works contracts generally, §§36-10-1 to 36-10-2.2.

PUBLIC OFFICERS AND EMPLOYEES.
Conflicts of interest.
Redevelopment violations constituting misconduct in office, §36-44-21.
County leadership training program, §§36-20-1 to 36-20-9.
County surveyors.
General provisions, §§36-7-1 to 36-7-16.
County treasurers.
General provisions, §§36-6-1 to 36-6-28.
Criminal justice coordinating council.
Membership not bar to holding public office, §35-6A-3.
Criminal law and procedure.
Backdated licenses, permits, or other authorizing documents.
Issuance by county or municipal officer or employee, §36-60-26.
Georgia municipal training act.
General provisions, §§36-45-1 to 36-45-9.
Municipal corporations.
Liability for acts or omissions, §§36-33-1 to 36-33-6.
Municipal training, §§36-45-1 to 36-45-9.
Redevelopment.
Prohibited transactions and interests.
Violations constituting misconduct in office, §36-44-21.
Zoning.
Conflicts of interest, §§36-67A-1 to 36-67A-6.

PUBLIC RECORDS.
Bond issues.
Local government and political subdivisions.
Repayment obligations.
Certain records not public records, §36-82-141.

PUBLIC SAFETY.
Attorney general.
Board of public safety.
Membership, §35-2-1.
Awards.
Department of public safety.
Employees.
Outstanding service, heroism or other exemplary acts, §35-2-10.
Board of public safety, §35-2-1.
Appointment of members, §35-2-1.
Definition of board, §35-1-1.
Members, §35-2-1.
Security guard division of department.
Rules and regulations, §35-2-75.
Terms of members, §35-2-1.
Bonds, surety.
Department of public safety.
Comptroller, §35-2-8.
Commissioner of public safety.
Appointment, §35-2-3.
Definition of commissioner, §35-1-1.
Deputy commissioner, §35-2-7.
Expert temporary assistance.
Employment, §35-2-6.
Headquarters, §35-2-13.
Immigration and customs laws.
Enforcement in state.
Designating peace officers to be trained, §35-2-14.
Memorandum of understanding with federal agencies, negotiation, §35-2-14.
Investigators.
Nonuniformed investigators.
Appointment, §35-1-6.
Lectures and demonstrations in public schools.
Powers as to lecturers, §35-2-11.
Removal, §§35-2-3, 35-2-4.
Rules and regulations, §35-2-3.
Temporary expert assistance.
Employment, §35-2-6.

PUBLIC SAFETY —Cont'd
Definitions, §35-1-1.
Department of public safety, §§35-2-1 to 35-2-14.
Aviation assets.
Authority as to state aviation assets, §35-2-140.
Transfer of personnel, aircraft, other assets by Georgia aviation authority to department, §35-2-140.
Aviation services in support of public safety.
Providing, responsibility, §35-2-140.
Awards to employees.
Outstanding service, heroism or other exemplary acts, §35-2-10.
Bonds, surety.
Comptroller, §35-2-8.
Comptroller, §35-2-8.
Creation, §35-2-2.
Definition of department, §35-1-1.
Deputy commissioner of public safety.
Membership in uniform division, §35-2-7.
Elections.
Political campaigns.
Participation in or contribution to by employees of department, §35-2-12.
Established, §35-2-2.
Georgia aviation authority.
Transfer of personnel, aircraft, other aviation assets to department, §35-2-140.
Georgia state patrol.
General provisions, §§35-2-30 to 35-2-58.
Headquarters, §35-2-13.
Injuries to state patrol members in line of duty.
Medical and surgical expenses payment, §35-2-9.
Motor carrier compliance division.
Creation, §35-2-100.
Duties and powers, §35-2-101.
Law enforcement officers, members designated as, §35-2-100.
Off-duty use of department vehicles, §35-2-101.
Territorial jurisdiction, §35-2-101.
Use of drug detection dogs, §35-2-101.
Weight inspectors, §35-2-102.

PUBLIC SAFETY —Cont'd
Department of public safety —Cont'd
Motor carrier compliance enforcement division.
Creation, §35-2-100.
Duties and powers, §35-2-101.
Law enforcement officers, members designated as, §35-2-100.
Off-duty use of department vehicles, §35-2-101.
Territorial jurisdiction, §35-2-101.
Use of drug detection dogs, §35-2-101.
Weight inspectors, §35-2-102.
Nomenclature act of 1995, §§35-2-80 to 35-2-88.
Peace officers standards and training council.
Administrative assignment to department, §35-8-3.
Police academy.
Assignment to department for administrative purposes, §35-4-3.
Public safety training center.
Assigned to department for administrative purposes, §35-5-3.
Radios.
Wavelength of radio system adopted by department.
Unauthorized use, §35-1-5.
Security guard division, §§35-2-70 to 35-2-75.
Authorized, §35-2-70.
Compensation of security guards, §35-2-72.
Duties of security guards, §35-2-71.
Employment of security guards, §35-2-73.
Establishment, §35-2-70.
Officials to be protected, §35-2-73.
Powers of security guards, §35-2-71.
Rules and regulations, §35-2-75.
State personnel administration.
Coverage.
Governor may prescribe, §35-2-74.
State personnel board.
Coverage.
Governor may prescribe, §35-2-74.

PUBLIC SAFETY —Cont'd
Department of public safety —Cont'd
Security guard division —Cont'd
Uniforms and equipment, §35-2-72.
Uniform division.
General provisions, §§35-2-30 to 35-2-58.
Division of forensic sciences, §§35-3-150 to 35-3-155.
Elections.
Department of public safety.
Employees.
Participation in or contribution to political campaigns, §35-2-12.
Emergencies.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.
Georgia public safety training center, §§35-5-1 to 35-5-7.
Georgia state patrol.
General provisions, §§35-2-30 to 35-2-58.
Immigration and customs laws.
Enforcement in state.
Designating peace officers to be trained.
Duty of commissioner, §35-2-14.
Memorandum of understanding with federal agencies, negotiation.
Duty of commissioner, §35-2-14.
Investigators.
Nonuniformed investigators, §35-1-6.
Motor carrier compliance division.
Creation, §35-2-100.
Duties and powers, §35-2-101.
Law enforcement officers, members designated as, §35-2-100.
Off-duty use of department vehicles, §35-2-101.
Territorial jurisdiction, §35-2-101.
Use of drug detection dogs, §35-2-101.
Weight inspectors, §35-2-102.
Motor carrier compliance enforcement division.
Creation, §35-2-100.
Duties and powers, §35-2-101.
Law enforcement officers, members designated as, §35-2-100.
Off-duty use of department vehicles, §35-2-101.
Territorial jurisdiction, §35-2-101.
Use of drug detection dogs, §35-2-101.
Weight inspectors, §35-2-102.
Public safety and judicial facilities authorities, §§36-75-1 to 36-75-13.

PUBLIC SAFETY —Cont'd
Radios.
Department of public safety.
Wavelength of radio system adopted by.
Unauthorized use, §35-1-5.
Rules and regulations.
Security guard division of department of public safety, §35-2-75.
Schools and education.
Lectures and demonstrations in public schools.
Powers of commissioner as to lecturers, §35-2-11.
State patrol.
General provisions, §§35-2-30 to 35-2-58.
Training center, §§35-5-1 to 35-5-7.
Uniform division.
General provisions, §§35-2-30 to 35-2-58.

PUBLIC SAFETY AND JUDICIAL FACILITIES AUTHORITIES, §§36-75-1 to 36-75-13.
Board of directors.
Control and management, §36-75-5.
Quorum, §36-75-6.
Term of directors, §36-75-5.
Bond issues, §§36-75-7 to 36-75-10.
Expenditure of revenue, §36-75-8.
Georgia uniform securities act, inapplicability, §36-75-10.
Indebtedness of state, §36-75-9.
Interest rates, §36-75-8.
Issuance, §36-75-8.
Payable from bond revenues, §36-75-9.
Power to borrow money and issue revenue bonds, §36-75-7.
Resolutions and referendums.
Approval prior to issuance of additional bonds, §36-75-12.
Required prior to issuance for bonded indebtedness for new projects, §36-75-11.
Tax-exempt status, §36-75-2.
Terms and conditions, §36-75-8.
Citation of act, §36-75-1.
Construction of act, §36-75-10.
Corporate powers, §36-75-7.
Creation, §36-75-4.
Joint authorities.
When activation of joint authorities prohibited, §36-75-13.
Definitions, §36-75-3.
Election of officers, §36-75-4.

PUBLIC SAFETY AND JUDICIAL FACILITIES AUTHORITIES —Cont'd
Eminent domain.
Power to exercise, §36-75-7.
Joint authorities.
Creation, §36-75-4.
When activation prohibited, §36-75-13.
Powers of authority, §36-75-7.
Projects.
Affirmative vote of board, §36-75-6.
Defined, §36-75-3.
Public policy, §36-75-2.
Short title, §36-75-1.

PUBLIC SAFETY NOMENCLATURE ACT, §§35-2-80 to 35-2-88.
Civil penalties, §35-2-86.
Damage suits against violators, §35-2-87.
Definitions, §35-2-81.
Department of public safety nomenclature act.
Short title, §35-2-80.
Injunctions against violations, §35-2-85.
Nomenclature of department.
Permission required for use, §35-2-82.
Procedure for seeking permission, §35-2-84.
Permission required for use.
Nomenclature of department, §35-2-82.
Procedure for seeking permission, §35-2-84.
Symbols of department, §35-2-83.
Symbols of department.
Permission required for use, §35-2-83.
Procedure for seeking permission, §35-2-84.
Title of act.
Short title, §35-2-80.
Violations.
Civil penalties, §35-2-86.
Criminal penalties, §35-2-88.
Damage suits, §35-2-87.
Injunctions against, §35-2-85.

PUBLIC SAFETY TRAINING CENTER, §§35-5-1 to 35-5-7.
Administrative assignment, §35-5-3.
Administrator.
Board of public safety.
Selection and establishment of compensation, §35-5-2.
Duties, §35-5-4.
Powers, §35-5-4.

PUBLIC SAFETY TRAINING CENTER —Cont'd
Administrator —Cont'd
Security police force.
Establishment, §35-5-7.
Application of provisions, §35-5-6.
Arrest.
Security police force.
Powers, §35-5-7.
Availability of facilities, §35-5-5.
Board of corrections.
Powers.
Effect of provisions on, §35-5-6.
Board of pardons and paroles.
Powers.
Effect of provisions on, §35-5-6.
Board of public safety.
Powers, §§35-5-2, 35-5-3, 35-5-5.
Citation of act.
Short title, §35-5-1.
Department of public safety.
Assigned to department for administrative purposes, §35-5-3.
Duties of administrator, §35-5-4.
Effect of chapter, §35-5-6.
Establishment and maintenance of center, §35-5-2.
Family violence.
Training guidelines and procedures, establishment, use by law enforcement training centers, §35-1-10.
Fees for use of center, §35-5-5.
Gifts, grants and donations, §35-5-3.
Local government.
Expenditures for use of center.
Authorized, §35-5-5.
Operation, §35-5-2.
Powers and duties in connection with training, §35-5-5.
Powers and duties of administrator, §35-5-4.
Property.
Board of public safety.
Acceptance of gifts, grants and donations, §35-5-3.
Purposes, §35-5-2.
Security police force, §35-5-7.
Short title, §35-5-1.
State and local law enforcement officers, firefighters and emergency medical personnel.
Use by, §35-5-5.
TASERS and electronic control weapons.
Use, training for peace officers, §35-8-26.

PUBLIC SAFETY TRAINING CENTER —Cont'd
Title of provisions, §35-5-1.
Trafficking persons for labor or sexual servitude.
Training officers investigating crimes involving, §35-1-16.

PUBLIC SAFETY TRAINING CENTER ACT.
Georgia public safety training center act.
General provisions, §§35-5-1 to 35-5-7.
Short title, §35-5-1.

PUBLIC UTILITIES.
Annexation.
Application by owners of 60 percent of land and 60 percent of electors.
Requiring use of municipal owned utilities by residents of annexed territory, §36-36-40.
Utility service agreements.
Effect of annexation, §36-36-8.
Counties.
Contracts.
Terms and conditions, §36-1-26.
County law libraries.
Furnishing of utilities by county governing authority, §36-15-8.
Highways, roads and streets.
Municipal street improvements.
Water, gas and sewer connections, §36-39-7.
Local government.
Contract conditions and limitations, §36-80-17.
Municipal corporations.
Annexation.
Application by owners of 60 percent of land and 60 percent of electors.
Requiring use of municipal owned utilities by residents of annexed territory, §36-36-40.
Contracts.
Terms and conditions, §36-30-3.
Power to grant franchises or make contracts, §36-34-2.
Sale, lease or other disposition of plants or properties, §§36-37-7 to 36-37-10.

PUBLIC WORKS.
Actions.
Local government bidding and contracting.
Bid bonds.
Action on breach, §36-91-54.
Payment bonds, §§36-91-93, 36-91-95.
Performance bonds.
Action on breach, §36-91-72.
Contractors.
Bonds for public contractors.
Local government bidding and contracting.
Bid bonds, §§36-91-40 to 36-91-54.
Payment bonds, §§36-91-90 to 36-91-95.
Performance bonds, §§36-91-70 to 36-91-72.
Contracts.
Local government bidding and contracting, §§36-91-1 to 36-91-95.
Regional facilities construction.
Authority of sheriff.
Impingement upon, §36-73-4.
Duties of sheriff.
Impingement upon, §36-73-4.
Facility located outside county or municipality.
Feasibility study, §36-73-3.
Feasibility study.
Facility located outside county or municipality, §36-73-3.
Hearings on proposed contract, §36-73-2.
Legislative intent, §36-73-1.
Powers of sheriff.
Impingement upon, §36-73-4.
Public hearing on proposed contract, §36-73-2.
Purpose of chapter, §36-73-1.
Sheriffs.
Impingement upon powers, authority, rights and duties, §36-73-4.
Counties.
Contracts, §§36-10-1 to 36-10-2.2.
Local government bidding and contracting generally, §§36-91-1 to 36-91-95.
Definitions.
Local government bidding and contracting, §36-91-2.

PUBLIC WORKS —Cont'd
Emergencies.
Local government bidding and contracting.
Exceptions to requirements, §36-91-22.
Hospital authorities.
Local government bidding and contracting.
Stipulations to exceptions to requirements, §36-91-22.
Limitation of actions.
Local government bidding and contracting.
Payment bonds, §36-91-95.
Local government bidding and contracting, §§36-91-1 to 36-91-95.
Actions.
Rights of persons protected by payment bond or security deposit, §36-91-93.
Time limitation, §36-91-95.
Advertising of contract opportunity, §36-91-20.
Addendum modifying plans and specifications.
Timing, §36-91-20.
Award of contract.
Competitive award requirements, §36-91-21.
Bid bonds, §§36-91-40 to 36-91-54.
Affiliated corporation.
Defined, §36-91-53.
Approval, §36-91-40.
Bid.
Defined, §§36-91-52, 36-91-53.
Bidder.
Defined, §36-91-52.
Breach of bond.
Action on, §36-91-54.
Cash in lieu of, §36-91-51.
Corporation.
Forfeiture of security by affiliated corporation, §36-91-53.
Definitions, §§36-91-52, 36-91-53.
Errors in calculation of bids.
Withdrawal of bids, §36-91-52.
Filing, §36-91-40.
Letters of credit in lieu of, §36-91-51.
Requirement.
Projects requiring, §36-91-50.
Revocation or withdrawal of bids, §36-91-50.
Appreciable errors, §36-91-52.

PUBLIC WORKS —Cont'd
Local government bidding and contracting —Cont'd
Competitive sealed bids, §36-91-20.
Requirements for award of contract, §36-91-21.
Competitive sealed proposals, §36-91-21.
Copy of bond or security agreement, §36-91-94.
Definitions, §36-91-2.
Emergencies.
Exceptions to requirements, §36-91-22.
Exceptions to requirements, §36-91-22.
Hospital authorities.
Stipulations to exceptions to requirements, §36-91-22.
Inmate labor, use, §36-91-22.
Local government bidding and contracting, §36-91-22.
Payment bonds, §§36-91-90 to 36-91-95.
Amount, §36-91-90.
Copies, §36-91-94.
Notice of commencement, §36-91-92.
Requirement, §36-91-90.
Rights of persons protected by, §36-91-93.
Subcontractors.
Liability of contracting party to for noncompliance, §36-91-91.
Performance bonds, §§36-91-70 to 36-91-72.
Amount, §36-91-70.
Breach.
Action on, §36-91-72.
Letter of credit in lieu of, §36-91-71.
Requirement, §36-91-70.
Substitutes.
Acceptable substitutes, §36-91-71.
Prequalification, §36-91-20.
Security deposits.
Subcontractors.
Liability of contracting party to, §36-91-91.
Short title, §36-91-1.
Sole source construction contracts.
Exceptions to provisions, §36-91-22.
Subcontractors.
Payment bonds.
Liability of contracting party to for noncompliance, §36-91-71.
Written contracts.
Required, §36-91-20.

PUBLIC WORKS —Cont'd
Notice.
Local government bidding and contracting.
Payment bonds.
Notice of commencement, §36-91-92.
Performance bonds.
Local government bidding and contracting, §§36-91-70 to 36-91-72.

PURCHASING.
Counties.
Interested county governing authority or county officer.
Purchase with county funds from, §36-1-14.
Local political subdivision purchases.
Preferences for products made in Georgia, §36-84-1.
Preferences.
Local government purchasing.
Georgia-made products, §36-84-1.
State patrol.
Uniforms and equipment, §35-2-50.

PURGING RECORDS.
Criminal records.
Misleading, inaccurate, etc., §35-3-37.

Q

QUARRIES.
Water system adverse impact by quarry prohibited, §36-60-22.

R

RADIO.
Georgia bureau of investigation.
Wavelength of radio system adopted by bureau.
Unauthorized use, §35-1-5.
Kimberly's call.
Recruitment of assistance in developing and implementing the alert system, §35-3-190.
Mattie's call act.
Recruitment of assistance in developing and implementing the alert system, §35-3-175.

RADIO —Cont'd
Misdemeanors.
Wavelength of radio system adopted by department of public safety or Georgia bureau of investigation.
Unauthorized use, §35-1-5.
Public safety.
Department of public safety.
Wavelength of radio system adopted by.
Unauthorized use, §35-1-5.

RAILROADS.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Trespass.
Railroad cars.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.

RAPE.
Alert system for unapprehended rape suspects, §35-3-190.
Kimberly's call.
Statewide alert system for unapprehended murder suspects, §35-3-190.
Unapprehended rape suspects.
Statewide alert system, §35-3-190.

RATES AND CHARGES.
Cable television.
Public providers, §36-90-6.

REAL PROPERTY.
Cemeteries.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Counties.
Building, electrical and other codes, §§36-13-1 to 36-13-12.
Development.
Transfer of development rights, §§36-66A-1, 36-66A-2.
Development impact fees, §§36-71-1 to 36-71-13.
Fraud.
Investigation of fraudulent real estate transactions.
Subpoena authority, §35-3-4.2.
Resource recovery development authorities.
Powers of authorities, §36-63-8.

REAL PROPERTY —Cont'd
Transfer of development rights, §§36-66A-1, 36-66A-2.
Zoning.
Conflicts of interest, §§36-67A-1 to 36-67A-6.
Procedures generally, §§36-66-1 to 36-66-6.

REAPPORTIONMENT.
Municipal elections.
Election districts.
Powers of cities, §36-35-4.1.

RECEIVERS.
Bond issues.
Local government and political subdivisions.
Revenue bonds.
Default in payment, §§36-82-67 to 36-82-72.

RECORDATION.
Local government code enforcement boards.
Certified order imposing administrative fines, §36-74-26.
Length of lien, §36-74-27.

RECORDERS' COURTS.
Municipal courts.
References to recorders' courts deemed to refer to municipal courts, §36-32-1.

RECORDS.
Computer transmitted records.
Identity fraud.
Compelling production of electronic communication records, §35-3-4.1.
Sexual offenses against minors.
Compelling production of electronic communication records, §35-3-4.1.
Electronic communication records.
Identity fraud.
Compelling production, §35-3-4.1.
Sexual offenses against minors.
Compelling production, §35-3-4.1.
Identity fraud.
Electronic communication records.
Compelling production, §35-3-4.1.
Law enforcement officers employment records, §35-8-15.
Sexual offenses against minors.
Electronic communication records.
Compelling production, §35-3-4.1.

RECREATION CENTERS.
County and municipal recreation system, §§36-64-1 to 36-64-15.

RECREATION SYSTEM.
County and municipal recreation system, §§36-64-1 to 36-64-15.

RECYCLING.
Counties.
Collection and disposal of recyclables and solid waste.
Standards and procedures.
Authority of local government to adopt laws, rules or regulations establishing, §36-80-22.
Municipal corporations.
Collection and disposal of recyclables and solid waste.
Standards and procedures.
Authority of local government to adopt laws, rules or regulations establishing, §36-80-22.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.

REDEVELOPMENT, §§36-44-1 to 36-44-23.
Bond issues.
Payment of redevelopment costs, §36-44-13.
Tax allocation bonds, §36-44-14.
Bond anticipation notes, §36-44-14.
Defined, §36-44-3.
Payment of redevelopment costs from proceeds, §36-44-13.
Tax millage rate, §36-44-15.
Urban redevelopment, §§36-61-12, 36-61-13.
Citation of act.
Short title, §36-44-1.
Conflicts of interest, §36-44-21.
Urban redevelopment.
Interest in redevelopment project.
Acquisition by public official or employee or employee of redevelopment agency, §36-61-19.
Contracts.
Conflicts of interest.
Voidable contracts and transactions, §36-44-21.

REDEVELOPMENT —Cont'd
Contracts —Cont'd
Exercise of redevelopment powers.
Contracting authority of political subdivision, §36-44-19.
Cooperation among public bodies for redevelopment purposes.
Applicability to exercise of redevelopment powers, §36-44-18.
Costs.
Loans for financing redevelopment costs, §§36-44-13, 36-44-16.
Payment of redevelopment costs, §36-44-13.
Definitions, §36-44-3.
Downtown development authorities.
General provisions, §§36-42-1 to 36-42-16.
Eminent domain.
Tax allocation districts.
Exercise of powers, §36-44-6.
Urban redevelopment.
Powers of municipalities and counties, §36-61-9.
Exemptions from levy and sale.
Urban redevelopment.
Property of municipality or county, §36-61-14.
General funds.
Insufficiency requirement for use by local legislative bodies, §36-44-20.
Insufficiency to pay principal and interest due on bonds.
Use of general funds, §36-44-20.
Interest.
Bond issues.
Tax allocation bonds, §36-44-14.
Interpretation and construction.
Powers cumulative and supplemental, §36-44-23.
Investments.
Urban redevelopment.
Bond issues.
Legal investments, §36-61-13.
Powers of municipalities and counties, §36-61-8.
Legislative declaration, §36-44-2.
Loans.
Financing of redevelopment costs, §§36-44-13, 36-44-16.
Local legislative body.
Defined, §36-44-3.
General funds.
Insufficiency requirement for use of funds, §36-44-20.
REDEVELOPMENT —Cont'd
Local legislative body —Cont'd
Redevelopment agency.
Designation as, §36-44-4.
Notice.
Redevelopment plan.
Public hearing on, §36-44-7.
Tax allocation districts.
Current taxable value of property within each district and tax allocation increment base, §36-44-10.
Urban redevelopment.
Disposal of real property in urban redevelopment area, §36-61-10.
Eminent domain.
Exercise of power, §36-61-9.
Urban redevelopment plan.
Hearing on, §36-61-7.
Powers of political subdivisions, §36-44-5.
Cumulative and supplemental nature of powers, §36-44-23.
Delegation to redevelopment agency, §36-44-6.
Eminent domain, §36-44-6.
Exercise.
Contracting authority of political subdivision, §36-44-19.
Cooperation among public bodies for redevelopment purposes.
Applicability to exercise of redevelopment powers, §36-44-18.
Local law authorization, §36-44-22.
Purpose, §36-44-5.
Local law authorization for exercise of powers, §36-44-22.
Redevelopment agencies.
Delegation to redevelopment agency, §36-44-6.
Purpose of provisions, §36-44-2.
Redevelopment agencies.
Creation, §36-44-4.
Defined, §36-44-3.
Local legislative body.
Designation as agency, §36-44-4.
Powers of political subdivisions.
Delegation to redevelopment agency, §36-44-6.
Redevelopment plan.
Amendment of approved plan, §36-44-7.
Approval, §36-44-7.
Defined, §36-44-3.

REDEVELOPMENT —Cont'd
Redevelopment plan —Cont'd
Proposals by agency, §36-44-7.
Tax allocation districts, §36-44-8.
Reports.
Urban redevelopment.
Urban redevelopment agencies.
Annual report, §36-61-18.
Tax allocation districts, §§36-44-3 to 36-44-17.
Bond issues.
Tax allocation bonds, §§36-44-13, 36-44-14.
Tax millage rate, §36-44-15.
Boundaries.
Change, §36-44-10.
Computation of tax allocation increments, §36-44-9.
Creation, §36-44-8.
Limitation, §36-44-17.
Defined, §36-44-3.
Dissolution, §36-44-12.
Limitation on creation of districts, §36-44-17.
Redevelopment plans, §36-44-8.
Taxable value.
Defined, §36-44-3.
Notice of current taxable value of property within district, §36-44-10.
Tax allocation increment base.
Defined, §36-44-3.
Determination.
Application to state revenue commissioner for, §36-44-10.
Notice, §36-44-10.
Tax allocation increments.
Computation, §36-44-9.
Defined, §36-44-3.
Positive tax allocation increments.
Allocation, §36-44-11.
Special fund, §36-44-11.
Defined, §36-44-3.
Termination, §36-44-12.
Title of act.
Short title, §36-44-1.
Urban redevelopment.
Cooperation among public bodies for redevelopment purposes.
Applicability to exercise of redevelopment powers, §36-44-18.
General provisions, §§36-61-1 to 36-61-19.

REDEVELOPMENT —Cont'd
Veterans.
Urban redevelopment.
Real property.
Exchanges with veterans' organization, §36-61-10.

REDEVELOPMENT POWERS LAW.
General provisions, §§36-44-1 to 36-44-23.
Short title, §36-44-1.

REDISTRICTING.
Municipal election districts, §36-35-4.1.

REFERENDUM.
Annexation.
Municipal corporations.
Resolution and referendum, §§36-36-50 to 36-36-61.
Counties.
Consolidation of cities and counties.
Separate approval by referendum, §36-60-16.
Municipal corporations.
Annexation.
Resolution and referendum, §§36-36-50 to 36-36-61.
Consolidation of counties and municipalities.
Separate approval by referendum, §36-60-16.
Municipal home rule, §36-35-3.

REGIONAL COMMISSIONS.
Coordinated and comprehensive planning by counties and municipalities.
Definition of regional commission, §36-70-2.
Municipality and county as members of regional commission, §36-70-4.
Motor vehicle decals or seals.
Vehicles owned or leased by local government, §36-80-20.

REGISTRATION.
Claims against counties, §36-11-2.
Orders on treasurer for claims, §36-11-3.
Municipal bonds, §§36-38-3, 36-38-4.

REPORTS.
Annexation.
Extension of services reports, §36-36-35.

REPORTS —Cont'd
Annexation —Cont'd
Resolution and referendum.
Extension of services to area proposed to be annexed, §36-36-56.
Approval, availability and distribution of report, §36-36-57.
Assisted living community.
Disabled person's elopement from.
Reporting to local police, time, §35-3-174.
County leadership training.
Accomplishments of academy, §36-20-9.
Development.
Impact fees.
Annual report, §36-71-8.
Disabled person's elopement from personal care home or assisted living community.
Reporting to local police, time, §35-3-174.
DNA analysis.
Persons convicted of felony offenses (eff 1/1/2013).
Results of analysis, §35-3-162.
Identity fraud.
Incident reports.
Preparation by law enforcement agency, §35-1-13.
Local government.
Budgets and audits.
Annual audit reports, §§36-81-7, 36-81-8.
Community indicators report, §36-81-8.
Motor vehicles.
Registration and licensing.
Stolen license plates, §35-1-4.
Stolen, converted and recovered vehicles, §35-1-4.
Municipal courts training council.
Annual report, §36-32-24.
Municipal training.
Accomplishments of institute, §36-45-9.
Peace officers standards and training council.
Reports to governor and general assembly, §35-8-4.
Personal care homes.
Disabled person's elopement from.
Reporting to local police, time, §35-3-174.
REPORTS —Cont'd
Redevelopment.
Urban redevelopment.
Urban redevelopment agencies.
Annual report, §36-61-18.
RESEARCH.
Enterprise zone employment.
Research and development industries generally, §§36-88-1 to 36-88-10.
RESOURCE RECOVERY DEVELOPMENT AUTHORITIES, §§36-63-1 to 36-63-11.
Board of directors, §§36-63-6, 36-63-7.
Bond issues, §§36-63-9, 36-63-10.
Indebtedness of state or political subdivisions.
Obligations not deemed to be, §36-63-10.
Powers of authorities, §36-63-8.
Citation of law.
Short title, §36-63-1.
Conflict of laws.
Applicability of certain other provisions to proceedings, §36-63-11.
Constitutional authority for provisions, §36-63-3.
Creation, §36-63-5.
Definitions, §36-63-4.
Directors, §§36-63-6, 36-63-7.
Interest.
Bond issues, §36-63-9.
Interpretation and construction.
Liberal construction of provisions, §36-63-11.
Joint authorities, §36-63-5.
Legislative declarations, §§36-63-2, 36-63-3.
Powers, §36-63-8.
Purpose of provisions, §36-63-2.
Real property.
Powers of authorities, §36-63-8.
Resolution or ordinance of need for authority to function, §36-63-5.
Taxation.
Exemptions, §36-63-3.
Title of law.
Short title, §36-63-1.
RESOURCE RECOVERY DEVELOPMENT AUTHORITIES LAW.
General provisions, §§36-63-1 to 36-63-11.
Short title, §36-63-1.

RESTRAINT OF TRADE.
Cable television.
Competition among providers, §§36-90-1 to 36-90-8.

RETIREMENT AND PENSIONS.
Counties.
Expenditures for employment benefits, §36-1-11.1.
State patrol.
Badges and weapons.
Receipt upon retirement, §35-2-42.
Retention by certain members, §35-2-49.

REVENUE AND TAXATION.
Annexation.
Municipal ad valorem taxes.
Applicability to annexed territory, §36-36-38.
City business improvement districts.
Financing of districts, §36-43-6.
Segregation of funds, §36-43-7.
Powers of municipalities with respect to district, §36-43-4.
Counties.
Fortunetelling and kindred practices, §36-1-15.
Investment of certain tax proceeds in authorized bonds, §36-1-8.
Parks and recreation.
County and municipal recreation systems, §§36-64-8 to 36-64-10, 36-64-15.
County police.
Levy to pay salaries and expenses, §36-8-4.
Development authorities.
Exemptions, §36-62-3.
Downtown development authorities.
Exemptions, §36-42-13.
Interlocal risk management agencies.
Exemption from taxes, §36-85-13.
Local government.
Notes, certificates, and other evidence of indebtedness in anticipation of taxes.
Power to issue, §36-80-2.
Municipal bonds.
Levy to pay bonded indebtedness.
Investment of funds acquired by, §36-38-1.
Parks and recreation.
County and municipal recreation systems, §§36-64-8 to 36-64-10, 36-64-15.

REVENUE AND TAXATION —Cont'd
Resource recovery development authorities.
Exemptions, §36-63-3.
State revenue commissioner.
Rules and regulations.
Homeowner tax relief grant rules, §36-89-5.
Urban residential finance authorities.
Exemptions, §36-41-11.

REVENUE BOND LAW.
General provisions.
Local government and political subdivisions, §§36-82-60 to 36-82-85, 36-82-100.
Short title, §36-82-60.

REZONING ACTIONS.
Agency decisions.
Reconsideration, §36-66-4.
Conflicts of interest, §§36-67A-1 to 36-67A-6.
Defined, §36-67A-1.
Special masters, §36-67A-4.

RIOTS.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.
State patrol.
Duty to suppress, §35-2-33.

RULES AND REGULATIONS.
Cable television.
Consumer choice for television act.
Customer service standards, §36-76-7.
Counties.
Grants of state funds.
Roads and maintenance, §36-17-25.
County police, §36-8-7.
Crime information center.
Dissemination of records, §§35-3-34, 35-3-35.
Homeowner tax relief grants.
State revenue commissioner to adopt rules, §36-89-5.
Interlocal risk management agencies.
Commissioner of insurance, §36-85-16.
Hearings, §36-85-17.
Municipal home rule.
Amendment or repeal of rules, §36-35-3.
Authority to adopt rules, §36-35-3.

RULES AND REGULATIONS —Cont'd
Public safety.
Commissioner of public safety, §35-2-3.
Security guard division of department of public safety, §35-2-75.
Special policemen.
Appointing authority.
Subject to rules and regulations of, §35-9-10.
Taxation.
Powers of commissioner.
Homeowner tax relief grant rules, §36-89-5.
Urban residential finance authorities, §36-41-4.

S

SADOMASOCHISTIC ABUSE.
Electronically furnishing obscene materials to minors, §35-3-4.1.

SADOMASOCHISTIC SEXUAL MATERIALS.
Child sexual exploitation, §35-3-4.1.
Computer or electronic pornography and child exploitation, §35-3-4.1.

SAFETY.
Department of public safety.
Security guard division, §§35-2-70 to 35-2-75.
State patrol generally, §§35-2-30 to 35-2-58.
Public safety training center, §§35-5-1 to 35-5-7.

SALARIES.
Counties.
Governing authorities, §§36-5-24 to 36-5-29.
County police, §36-8-4.

SALES AND USE TAXES.
Public safety and judicial facilities authorities.
Power to impose, §36-75-4.

SATISFACTION.
Judgments.
Claims against counties.
Judgment against county, §36-11-7.

SCHOOLS AND EDUCATION.
Crime information center.
Disclosure of exonerated first offender's criminal record.
Public or private school employment, §35-3-34.1.

SCHOOLS AND EDUCATION —Cont'd
Independent school systems.
Commercial paper notes.
Authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
Municipal corporations.
Annexation by municipality.
Effective date for enrollment purposes, §36-36-2.
Local boards of education.
Budgets.
Electronic transmission of budgets, §36-80-21.
Motor vehicles.
Decal or seal on vehicles owned or leased by independent school system, §36-80-20.
Municipal corporations.
Independent school systems.
Annexation by municipality.
Effective date for enrollment purposes, §36-36-2.
Public safety.
Lectures and demonstrations in public schools.
Powers of commissioner as to lecturers, §35-2-11.
School districts.
Bankruptcy, relief from payment of debts.
District not authorized to seek, §36-80-5.
Commercial paper notes.
Authority to issue, securing, renewal, reissuance, §§36-82-240, 36-82-241.
Motor vehicles.
Decal or seal on vehicles owned or leased by independent school system, §36-80-20.
State patrol.
Incentive pay, §35-2-42.

SCHOOL TAXES.
Homeowner tax relief grants, §§36-89-1 to 36-89-6.
Allotment procedures, §36-89-4.
Appropriations, §36-89-2.
Adjustments to fund eligible assessed value, §36-89-3.
General assembly to specify amount appropriated, §36-89-3.
Conditions under which county is eligible, §36-89-4.

SCHOOL TAXES —Cont'd
Homeowner tax relief grants —Cont'd
Definitions, §36-89-1.
Distribution of grants, §36-89-5.
Erroneous or illegal credits, §36-89-6.
Excess funds, §36-89-5.
Notice to taxpayer of reduction on tax bill, §36-89-4.
Purpose, §36-89-2.
Rules and regulations, §36-89-5.

SEARCHES AND SEIZURES.
Bureau of investigation.
Powers of agents, §35-3-8.

SEATS.
Municipal corporations.
Vacancies on governing authority, §36-30-13.

SECRETARY OF STATE.
Annexation.
Application by 100 percent of landowners.
Filing of identification of annexed property, §36-36-21.
Cable television.
Consumer choice for television act.
Imposition of state franchise application fee, §36-76-4.
Public safety and judicial facilities authorities.
Filing incorporation documents, §36-75-4.

SECURED TRANSACTIONS.
Public safety and judicial facilities authorities.
Power to acquire interest, §36-75-7.
Urban residential finance authorities.
Definition of security interest, §36-41-3.
Purchase of security interest or participations therein, §36-41-7.

SECURITIES.
Development authorities.
Bonds not subject to regulation under securities act, §36-62-11.
Downtown development authorities.
Applicability of Georgia uniform securities act of 2008, §36-42-15.

SECURITY GUARDS.
Division of department of public safety, §§35-2-70 to 35-2-75.

SECURITY INTERESTS.
Urban residential finance authorities, §§36-41-3, 36-41-7.

SECURITY SYSTEMS.
Local governments.
Installation, service, sale, etc., by locality, §36-60-12.

SEGREGATION.
City business improvement districts.
Segregation of funds, §36-43-7.

SELF-INSURANCE.
Local government.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.

SEMESTER HOURS.
Public safety department.
Uniform division.
Pay incentives based on credit hours of college study, §35-2-42.

SENTENCING.
Municipal courts.
Punishments which may be imposed, §§36-32-1, 36-32-5.
Right to counsel, §36-32-1.

SERVICE AREAS.
Development impact fees.
Defined, §36-71-2.

SERVICE OF PROCESS.
Counties.
Service on, §36-1-5.
County governing authorities.
Authorizing service by officers, agents and employees, §36-5-26.
Local government code enforcement boards.
Service of notice by publication or posting, §36-74-29.
Municipal corporations.
Powers relating to administration of government, §36-34-2.

SETTLEMENTS.
Claims against local government entities.
Settlement constitutes bar, §36-92-3.
Municipal corporations.
Bonded debt, §36-38-20.

SEWAGE SYSTEMS.
Liens.
Unpaid charges for sewerage service.
Limited liens, §36-60-17.

SEWAGE SYSTEMS —Cont'd
Municipal corporations.
Power to acquire and construct, §36-34-5.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.

SEX OFFENDERS.
Likelihood offender will engage in another crime.
Risk assessment classification.
Bureau of investigation, assistance in determining, §35-3-4.
Registration.
Risk assessment classification.
Bureau of investigation, assistance in determining, §35-3-4.
Sexually dangerous predator.
Risk assessment classification.
Bureau of investigation, assistance in determining, §35-3-4.
Sexual offender registration review board.
Risk assessment classification.
Bureau of investigation, assistance in determining, §35-3-4.
Risk assessment classification.
Bureau of investigation, assistance in determining, §35-3-4.
Sexually dangerous predator.
Risk assessment classification.
Bureau of investigation, assistance in determining, §35-3-4.

SEXUAL INTERCOURSE.
Electronically furnishing obscene materials to minors, §35-3-4.1.

SEXUALLY DANGEROUS PREDATORS.
Risk assessment classification.
Bureau of investigation, assistance in determining, §35-3-4.

SEXUAL OFFENSES.
Computer or electronic pornography and child exploitation, §35-3-4.1.
Electronically furnishing obscene material to minors, §35-3-4.1.
Trafficking of persons for labor or sexual servitude.
Bureau of investigation.
Duty to identify and investigate violations, §35-3-4.

SEXUAL OFFENSES —Cont'd
Trafficking of persons for labor or sexual servitude —Cont'd
Bureau of investigation —Cont'd
Subpoena power for investigating violations, §35-3-4.3.
Training law enforcement officers investigating crimes involving, §35-1-16.

SHERIFFS.
County property.
Protection, §36-9-8.
Courthouse security.
Comprehensive plan.
Development and implementation.
Budget, approval by governing authority, §36-81-11.
Development and implementation of plans.
Budget approval, subject to, §36-81-11.
Deputies.
Immunity from liability, §35-1-7.
Subsistence allowance, §35-1-3.
Duties.
County property.
Protection, §36-9-8.
Employment and training of peace officers.
General provisions, §§35-8-1 to 35-8-26.
Georgia peace officer standards and training act, §§35-8-1 to 35-8-26.
Police academy.
General provisions, §§35-4-1 to 35-4-9.
Public grounds and other county property.
Protection, §36-9-8.
Security of county court house.
Comprehensive plan.
Development and implementation.
Budget, approval by governing authority, §36-81-11.

SHOPLIFTING.
Jurisdiction.
Municipal courts.
Shoplifting, misdemeanor theft by, §36-32-9.
Shoplifting of $300 or less, §36-32-9.
Municipal courts.
Shoplifting, misdemeanor theft by.
Jurisdiction, §36-32-9.
Theft of $300 or less.
Fines and forfeitures.
Retention by municipalities, §36-32-9.

SHOPLIFTING —Cont'd
Municipal courts —Cont'd
Theft of $300 or less —Cont'd
Jurisdiction, §36-32-9.
Transfer of cases, §36-32-9.

SHOW CAUSE ORDERS.
Streets.
Improvements.
Validation of ordinance, assessments and liens, §36-39-29.

SIGNATURES.
Facsimile signatures.
Bond issues.
Local government and political subdivisions.
Repayment obligations.
Use of facsimile signatures and seals, §36-82-140.

SIGNS.
English language.
Privately owned businesses.
Municipalities prohibited from restricting use of language other than English, §36-35-6.1.

SILVER ALERTS.
Statewide alert system for missing disabled adults, §§35-3-170 to 35-3-180.

SLUDGE.
Recovery, §§36-63-2, 36-63-4.

SLUMS.
Urban redevelopment.
General provisions, §§36-61-1 to 36-61-19.

SOCIAL SECURITY.
Counties.
Expenditures for employment benefits, §36-1-11.1.

SOLID WASTE.
Contracts.
Private solid waste collection firms.
Governmental action or displacement.
Firm's agreement with private entity or person not to be invalidated by, §36-80-22.

Counties.
Collection and disposal of solid waste and recyclables.
Standards and procedures.
Authority to adopt laws, rules or regulations establishing, §36-80-22.

SOLID WASTE —Cont'd
Counties —Cont'd
Transporting waste across state or county boundaries for dumping.
Permission required, §36-1-16.
Private solid waste collection firms.
Governmental action or displacement.
Firm's agreement with private entity or person not to be invalidated by, §36-80-22.
Recycling.
Collection and disposal of recyclables and solid waste.
Standards and procedures.
Authority of local government to adopt laws, rules or regulations establishing, §36-80-22.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.

SOUTH CAROLINA.
Law enforcement officers.
Fresh pursuit.
Authority of officers in fresh pursuit in state, §35-1-15.

SOVEREIGN IMMUNITY.
Cable service providers.
Public providers not eligible for antitrust immunity, §36-90-8.
Counties.
Motor vehicle claims.
Waiver of immunity.
Claims against local government entities generally, §§36-92-1 to 36-92-5.
Interlocal governmental cooperation.
Public agencies.
Preservation of sovereign immunity, §36-69A-5.
Interlocal risk management agencies.
Generally, §36-85-20.
Motor vehicle claims.
Waiver of immunity.
Claims against local government entities generally, §§36-92-1 to 36-92-5.
Municipal corporations.
Generally, §36-33-1.

SOVEREIGN IMMUNITY —Cont'd
Municipal corporations —Cont'd
Motor vehicle claims.
Waiver of immunity.
Claims against local government entities generally, §§36-92-1 to 36-92-5.

SPECIAL DISTRICTS.
Downtown development authorities.
Creation of special districts authorized, §36-42-16.
Municipal corporations.
New municipal corporation created by local act.
Removal from county special districts for local government services, §36-31-11.
Special service districts divided into noncontiguous areas, §36-31-12.

SPECIAL MASTERS.
Zoning authority, §36-67A-5.

SPECIAL POLICEMEN, §§35-9-1 to 35-9-15.
Agreement as to compensation, §35-9-7.
Application for appointment.
Governor of this state, §35-9-13.
Governor or subdivision of another state, §§35-9-2, 35-9-3.
Status as employees of state or subdivision requesting appointment, §35-9-8.
Appointing authority.
Defined, §35-9-1.
Rules and regulations.
Subject to, §35-9-10.
Appointment.
Application by governor of this state, §35-9-13.
Application by governor or subdivision of another state, §§35-9-2, 35-9-3.
Status as employees of state or subdivision requesting appointment, §35-9-8.
Certificate of appointment, §35-9-5.
Law enforcement office of United States or any state as officer of this state, §35-9-15.
Qualifications, §35-9-4.
Termination and revocation of appointment, §35-9-11.
Exercise of powers by persons knowing of revocation of appointment, §35-9-14.

SPECIAL POLICEMEN —Cont'd
Badges, §35-9-9.
Certificate of appointment, §35-9-5.
Change of address.
Notice to appointing authority, §35-9-9.
Compensation.
Agreements for, §35-9-7.
Duties, §35-9-9.
Immunity.
Acts or omissions of special policemen.
Immunity of state from liability, §35-9-12.
Notice.
Termination and revocation of appointment, §35-9-11.
Effect of filing and mailing of notice, §35-9-14.
Oath of office, §35-9-6.
Powers, §35-9-9.
Certificate of appointment as authority to exercise, §35-9-5.
Qualifications for appointment, §35-9-4.
Rules and regulations.
Appointing authority.
Subject to rules and regulations of, §35-9-10.
Status.
Employees of state or subdivision requesting employment, §35-9-8.
Termination and revocation of appointment, §35-9-11.
Exercise of powers by persons knowing of revocation of appointment, §35-9-14.
United States.
Appointment of law enforcement officer of United States as officer in this state, §35-9-15.

STATE AID.
Counties.
Grants of state funds.
General provisions, §§36-17-1 to 36-17-25.
Municipal corporations.
Grants of state funds.
General provisions, §§36-40-1 to 36-40-46.

STATE AIRCRAFT.
Department of public safety.
State aviation assets, authority, §35-2-140.

STATE AUDITOR.
Local government budgets and audits.
Grant certification forms, §36-81-8.1.
Municipal corporations.
Grants for capital outlay items.
Submission of annual audit to, §36-40-46.
Victim assistance programs.
Inspection of books, records, expenditures and income, §35-6-4.
Victim services commission.
Assistance to, §35-6-4.

STATE CAPITOL.
Security guards to protect executive department at state capitol, §35-2-73.

STATE CEILING ON PRIVATE ACTIVITY BONDS.
Applications in specified amounts, §36-82-185.
Deemed allocated and assigned, §36-82-201.
Determination, §36-82-184.
Economic development share, §36-82-186.
Transfer of fund from, §36-82-197.
Flexible share for 1990, §36-82-193.
Housing share, §§36-82-189, 36-82-197.
Legislative purposes, §36-82-181.
Mortgage credit certificate carry forward election, §36-82-200.
Notice of allocation, §36-82-185.
Powers of department, §36-82-183.
State ceiling defined, §36-82-182.

STATE CRIME LABORATORY.
Division of forensic sciences, §§35-3-150 to 35-3-155.

STATE DEPARTMENTS AND AGENCIES.
Bureau of investigation.
Antiterrorism task force, §§35-3-60 to 35-3-65.
Crime information center, §§35-3-30 to 35-3-40.
General provisions, §§35-3-1 to 35-3-13.
Missing children information center.
General provisions, §§35-3-80 to 35-3-85.
Department of public safety.
General provisions, §§35-2-1 to 35-2-14.

STATE DEPARTMENTS AND AGENCIES —Cont'd
Department of public safety —Cont'd
Security guard division, §§35-2-70 to 35-2-75.
Uniform division, §§35-2-30 to 35-2-58.
Interlocal cooperation act.
General provisions, §§36-69A-1 to 36-69A-9.

STATE OF GEORGIA.
Private activity bonds.
Allocation system.
General provisions, §§36-82-180 to 36-82-202.

STATE PATROL, §§35-2-30 to 35-2-58.
Allowances.
Clothing allowance.
Members assigned permanently to personal security or special duty assignments, §35-2-52.
Arrest.
Violations of criminal laws, §35-2-33.
Auxiliary service, §35-2-36.1.
Badges.
Disability in line of duty.
Retention, §35-2-49.1.
Public safety nomenclature act, §§35-2-80 to 35-2-88.
Retirement.
Receipt upon retirement, §35-2-42.
Retention by certain members upon retirement, §35-2-49.
Barracks or quarters.
Commissioner of public safety.
Powers as to, §§35-2-39, 35-2-40.
Battalion, §35-2-31.
Communications officers.
Compensation, §35-2-42.
Discharge, §35-2-46.
Employment, §35-2-37.
Ranks or categories, §35-2-37.
Term of service, §35-2-45.
Uniforms and equipment, §35-2-49.
Composition, §35-2-36.
Rank structure, §35-2-36.
Recruits or cadets, §35-2-36.
Clothing allowance.
Members assigned permanently to personal security or special duty assignments, §35-2-52.
College study or degree.
Incentive pay, §35-2-42.
Commissioner of public safety.
Barracks or quarters.
Powers as to, §§35-2-39, 35-2-40.

STATE PATROL —Cont'd
Commissioner of public safety —Cont'd
Chief officer of uniform division, §35-2-5.
Districts or divisions.
Barracks and equipment for.
Purchase, lease or construction, §35-2-40.
Division of state into, §35-2-38.
Duties.
Enlistment, examination and training of recruits and troopers, §35-2-44.
Uniforms and equipment.
Providing members with, §35-2-49.
Membership in uniform division, §35-2-4.
Rank in uniform division, §35-2-5.
Suspension of members pending dismissal, §35-2-47.
Compensation of members, §35-2-42.
Restrictions, §35-2-53.
Composition, §35-2-31.
Comptroller.
Membership in uniform division prohibited, §35-2-8.
Contracts.
Uniforms and equipment.
Purchasing, §35-2-50.
Conveyances to, §§35-2-41, 35-2-41.1.
Creation, §35-2-30.
Designation, §35-2-30.
Disability in line of duty.
Retention of weapon and badge, §35-2-49.1.
Discharge of members, §35-2-46.
Districts or divisions.
Commissioner of public safety.
Barracks and equipment for.
Purchase, lease or construction, §35-2-40.
Division of state into, §35-2-38.
Headquarters.
Local governments.
Purchase or conveyance of property for use as headquarters.
Authorization, §35-2-41.
Duties, §§35-2-32, 35-2-33.
Emergency response and vehicular pursuit policies.
Agencies to adopt, crossing jurisdictions, policies to address, failure to adopt, funding withheld, §35-1-14.

STATE PATROL —Cont'd
Enlistment.
Auxiliary service, §35-2-36.1.
Duties of commissioner, §35-2-44.
Fines.
Payment and distribution of fines, §35-2-53.
Fugitives from justice.
Duty to apprehend, §35-2-33.
Headquarters staff, §§35-2-31, 35-2-34.
Clerical duties, §35-2-35.
Composition, §35-2-34.
Transfer of members, §35-2-35.
High-speed police chases, §35-1-14.
Highways.
Criminal violations occurring off public roads and highways.
Inquiry into, §35-2-33.
Safety rest areas and welcome centers.
Patrolling, §35-2-32.
Holidays.
Compensatory time off for members working on state holiday, §35-2-55.
Identity fraud.
Incident reports.
Preparation by law enforcement agency, §35-1-13.
Incentive pay.
College study or degree, §35-2-42.
Injuries to members in line of duty.
Medical and surgical expenses.
Payment by department, §35-2-9.
Insurance.
Group insurance, §35-2-54.
Jurisdiction, §35-2-32.
Labor strikes or picketing.
Duty to suppress, §35-2-33.
Local government.
Division or district headquarters.
Purchase or conveyance of property for use as.
Authorization, §35-2-41.
Motor vehicles.
Enforcement of motor vehicle laws, §35-2-33.
Off-duty use by uniform division, §35-2-56.
Retired unmarked pursuit cars.
Use for training, §35-2-57.
Sale of surplus vehicles toward purchase of new vehicles, §35-2-58.
Performance ranking of members.
Periodic ranking, §35-2-45.

STATE PATROL —Cont'd
Promotions and demotions, §35-2-45.
Property.
Conveyance of property to, §§35-2-41, 35-2-41.1.
Purchasing.
Uniforms and equipment, §35-2-50.
Pursuit policies.
Agencies to adopt, crossing jurisdictions, policies to address, failure to adopt, funding withheld, §35-1-14.
Retirement.
Badge and revolver.
Receipt upon retirement, §35-2-42.
Retention by certain members, §35-2-49.
Riots.
Duty to suppress, §35-2-33.
Schools and education.
Incentive pay, §35-2-42.
Subsistence and per diem allowance, §35-2-42.
Suspension of members pending dismissal, §35-2-47.
Training.
Preliminary training.
Duties of commissioner, §35-2-44.
Retired unmarked pursuit cars.
Use for training, §35-2-57.
Uniforms and equipment.
Duties of commissioner, §35-2-49.
Excess clothing and equipment.
Storeroom for, §35-2-51.
Off-duty use of equipment by uniform division, §35-2-56.
Old and worn equipment.
Disposition, §35-2-51.
Purchasing, §35-2-50.
Weapons.
Disability in line of duty.
Retention of weapon and badge, §35-2-49.1.
Retirement.
Receipt of revolver upon, §35-2-42.
Retention by certain members upon retirement, §35-2-49.

STATE PERSONNEL ADMINISTRATION.
Bureau of investigation.
Agents.
Applicability to, §35-3-11.

STATE PERSONNEL ADMINISTRATION —Cont'd
Bureau of investigation —Cont'd
Director of investigation.
Classification in system, §35-3-6.
Crime information center.
Status of personnel, §35-3-31.
Security guard division of department of public safety.
Governor may prescribe coverage, §35-2-74.

STATE PERSONNEL BOARD.
Bureau of investigation.
Director of investigation.
Classification in system, §35-3-6.
Crime information center.
Status of personnel, §35-3-31.
Security guard division of department of public safety.
Governor may prescribe coverage, §35-2-74.

STATE VICTIM SERVICES COMMISSION, §§35-6-1 to 35-6-4.

STATUTE OF FRAUDS.
Annexation.
Arbitration of annexation disputes.
Written agreement governing terms of annexation, §36-36-119.

STATUTE OF LIMITATIONS.
Highways, roads and streets.
Municipal street improvements.
Assessments.
Actions contesting or enjoining, §36-39-24.
Municipal corporations.
Actions for injury to persons or property.
Suspension of limitations, §36-33-5.
Public works.
Local government bidding and contracting.
Payment bonds, §36-91-95.

STOREROOMS.
State patrol.
Uniforms and equipment, §35-2-51.

STORM-WATER.
Defined, §§36-71-2, 36-82-61.

STREAMS.
Bridge construction, §§36-14-1, 36-14-3.

STREAMS —Cont'd
County jurisdiction, §36-1-2.

STREET GANGS.
Law enforcement officers.
Peace officers standards and training council.
Establishment of training courses for peace officers, §35-8-7.

STREETS.
Improvement bonds, §§36-39-25 to 36-39-27.

STRIKES.
State patrol.
Suppression of labor strikes or picketing, §35-2-33.

SUBDIVISIONS.
Municipal corporations.
Incorporation.
Eligibility standards.
Use and subdivision of areas proposed to be incorporated, §36-31-4.

SUBPOENAS.
Bureau of investigation.
Trafficking of persons for labor and sexual servitude investigations, §35-3-4.3.
Electronic communication records.
Identity fraud.
Compelling production, §35-3-4.1.
Sexual offenses against minors.
Compelling production, §35-3-4.1.
Identity fraud.
Compelling production of electronic communication records, §35-3-4.1.
Law enforcement officers.
Peace officers standards and training council, §35-8-6.
Local government code enforcement boards.
Boards created prior to January 1, 2003.
Issuance, §36-74-45.
Real estate transactions.
Investigation of fraudulent real estate transactions, §35-3-4.2.
Sexual offenses against minors.
Compelling production of electronic communication records, §35-3-4.1.
Trafficking of persons for labor and sexual servitude.
Investigations by bureau of investigation, §35-3-4.3.

SUBPOENAS (EFF 1/1/2013).
Local government code enforcement boards.
Boards created prior to January 1, 2003.
Issuance, §36-74-45.

SUMMONS AND PROCESS.
County governing authorities.
Authorizing service by officers, agents and employees, §36-5-26.

SUPERIOR COURTS.
Annexation.
Arbitration of annexation disputes.
Appeal of panel order, §36-36-116.
Clerks of court.
Deputies.
County law librarians, §36-15-2.
Local government code enforcement boards.
Administrative fines.
Petition for enforcement, §36-74-26.

SURGERY.
Bureau of investigation.
Costs, §35-3-12.
Public safety department.
Costs, §35-2-9.
State patrol.
Costs, §35-2-9.

SURVEYS AND SURVEYORS.
Annexation.
Municipality identification of annexed area, §36-36-3.
County surveyors.
General provisions, §§36-7-1 to 36-7-16.

SWIMMING POOLS.
Municipal corporations.
Lease of property to nonprofit corporations.
Operation and management of, §36-37-6.

SYMBOLS OF POLICE DEPARTMENTS.
Nomenclature of municipal and county police departments generally, §§35-10-1 to 35-10-11.

T

TASER AND ELECTRONIC CONTROL WEAPONS ACT.
Law enforcement officers.
Use, requirements, policies, training, §35-8-26.

TASERS.
Law enforcement officers.
Use, requirements, policies, training, §35-8-26.

TAXATION.
Annexation.
Application by owners of 60 percent of land and 60 percent of electors.
Municipal ad valorem taxes.
Applicability to annexed territory, §36-36-38.
Effective date of annexation, §36-36-2.
City business improvement districts.
Financing of districts, §36-43-6.
Segregation of funds, §36-43-7.
Powers of municipalities with respect to district, §36-43-4.
Counties.
County police.
Levy to pay salaries and expenses, §36-8-4.
Fortunetelling and kindred practices, §36-1-15.
Investment of certain tax proceeds in authorized bonds, §36-1-8.
Parks and recreation.
County and municipal recreation systems, §§36-64-8 to 36-64-10, 36-64-15.
Development authorities.
Exemptions, §36-62-3.
Downtown development authorities.
Exemptions, §36-42-13.
Special districts.
Levy of taxes or assessments, §36-42-16.
Enterprise zone employment, §§36-88-8, 36-88-9.
Exemptions from taxation.
Development authorities, §36-62-3.
Downtown development authorities, §36-42-13.
Income taxes.
Local government employees group health plan, §36-21-9.
Interlocal risk management agencies, §36-85-13.
Resource recovery development authorities, §36-63-3.
Urban residential finance authorities, §36-41-11.
Interlocal risk management agencies.
Exemption from taxes, §36-85-13.

TAXATION —Cont'd
Municipal bonds.
Levy to pay bonded indebtedness.
Investment of funds acquired by, §36-38-1.
Parks and recreation.
County and municipal recreation systems, §§36-64-8 to 36-64-10, 36-64-15.
Resource recovery development authorities.
Exemptions, §36-63-3.
Urban residential finance authorities.
Exemptions, §36-41-11.

TAXICABS.
Certificates of public necessity and convenience.
Requirement to obtain, §36-60-25.
Medallions for taxicabs.
Requirement to obtain, §36-60-25.
Vehicles for hire, §36-60-25.

TECHNICAL COLLEGE SYSTEM OF GEORGIA.
Emergency medical personnel.
Training classes, offering, §35-5-6.
Public safety first responders.
Training classes, offering, §35-5-6.

TELECOMMUNICATIONS.
Advanced broadband collocation act, §§36-66B-1 to 36-66B-4.
Enterprise zone employment generally, §§36-88-1 to 36-88-10.
Erection of towers.
Lease or contract of municipal property, §36-37-6.
Sexual offenses against minors.
Compelling production of electronic communication records, §35-3-4.1.

TELECOMMUNICATIONS DEVICES FOR THE DEAF.
Law enforcement officers.
Training of communications officers, §35-8-23.

TELECOMMUNICATIONS TOWERS.
Lease or contract of municipal property, §36-37-6.

TELEPHONES.
Deaf and hearing impaired persons.
Law enforcement officers.
TDD training for communications officers, §35-8-23.

TELEPHONES —Cont'd
Identity fraud.
Compelling production of electronic communication records, §35-3-4.1.
Mobile telephones.
Computer or electronic pornography and child exploitation, §35-3-4.1.
9-1-1 system.
Dispatcher training, §35-8-23.
Public safety training center.
Administration and coordination of training, §35-5-5.
Training of communications officers, §35-8-23.
Public safety training center, §35-5-5.
Obscene telephone contact, §35-3-4.1.
Sexual offenses against minors.
Compelling production of electronic communication records, §35-3-4.1.

TELEVISION.
Advertising.
Public safety nomenclature act, §§35-2-80 to 35-2-88.
Cable television.
Consumer choice for television act, §§36-76-1 to 36-76-11.
County regulation, §§36-18-1 to 36-18-5.
Counties.
Cable television.
County regulation generally, §§36-18-1 to 36-18-5.
Kimberly's call.
Recruitment of assistance in developing and implementing the alert system, §35-3-190.
Mattie's call act.
Recruitment of assistance in developing and implementing the alert system, §35-3-175.

TENEMENTS.
Slums.
Urban development, §§36-61-1 to 36-61-19.

TENNESSEE.
Law enforcement officers.
Fresh pursuit.
Authority of officers in fresh pursuit in state, §35-1-15.

TERRORISM.
Antiterrorism task force, §§35-3-60 to 35-3-65.
Citation of act.
Short title, §35-3-60.

TERRORISM —Cont'd
Antiterrorism task force —Cont'd
Confidentiality of investigative reports and identity of agents, §35-3-64.
Cooperation with other law enforcement agencies, §35-3-65.
Creation, §35-3-63.
Definition of terroristic act, §35-3-62.
Identity of agents.
Confidentiality, §35-3-64.
Interpretation and construction.
Liberal construction, §35-3-61.
Legislative declaration, §35-3-61.
Other law enforcement agencies.
Cooperation with, §35-3-65.
Purpose, §35-3-63.
Title of act.
Short title, §35-3-60.
War on terrorism local assistance act, §§36-75-1 to 36-75-13.

TEXT MESSAGING.
Computer or electronic pornography and child exploitation, §35-3-4.1.

THEFT.
Motor vehicles.
Reporting stolen vehicles and license plates, §35-1-4.

THE GEORGIA MUNICIPAL TRAINING COUNCIL ACT.
General provisions, §§36-32-20 to 36-32-27.
Short title, §36-32-20.

THE MUNICIPAL HOME RULE ACT OF 1965.
General provisions, §§36-35-1 to 36-35-8.
Short title, §36-35-1.

THE ZONING PROCEDURES LAW.
General provisions, §§36-66-1 to 36-66-6.
Short title, §36-66-1.

TIMBER.
Sales.
Local government.
Military installations and facilities.
Proceeds of timber sales from.
Allocation and expenditure, §36-80-15.

TIME.
Disabled person's elopement from personal care home or assisted living community.
Reporting to local police, §35-3-174.

TIME —Cont'd
DNA analysis of persons convicted of felonies.
Withdrawal of samples, §35-3-161.
DNA analysis of persons convicted of felonies (eff 1/1/2013).
Withdrawal of samples, §35-3-161.

TOLL ROADS AND TOLL BRIDGES.
Private toll roads and bridges.
Contracts with private companies to construct and operate, §36-60-21.

TOMBSTONES.
Abandoned cemeteries and burial grounds.
Burial object defined as including, §36-72-2.

TOPOGRAPHIC FACTORS.
Municipal annexation pursuant to resolution and referendum.
Fixing new boundaries, §36-36-54.

TORNADOES.
Traffic control.
Volunteers directing traffic in emergencies, §35-1-11.

TORTS.
Counties.
Motor vehicle claims.
Waiver of immunity.
Claims against local government entities generally, §§36-92-1 to 36-92-5.
Motor vehicles.
Claims against local government entities.
Waiver of immunity, §§36-92-1 to 36-92-5.
Municipal corporations.
Liability for acts or omissions, §§36-33-1 to 36-33-6.
Motor vehicle claims.
Waiver of immunity.
Claims against local government entities generally, §§36-92-1 to 36-92-5.

TOURISM.
Enterprise zone employment generally, §§36-88-1 to 36-88-10.

TOWERS.
Telecommunications.
Lease or contract of municipal property, §36-37-6.

TOWNS.
Annexation.
General provisions, §§36-36-1 to 36-36-92.
Development authorities.
County and municipal development authorities, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Development impact fees.
General provisions, §§36-71-1 to 36-71-13.
Emergencies.
Mutual aid, §§36-69-1 to 36-69-10.
Insurance.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Interest rates on obligations other than general obligation bonds.
Local government and political subdivisions, §§36-82-120 to 36-82-124.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Investments.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Local government authorities registration act, §36-80-16.
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.
Local government investment pool, §§36-83-1 to 36-83-8.
Municipal bonds, §§36-38-1 to 36-38-23.
Municipal courts.
General provisions, §§36-32-1 to 36-32-40.
Municipal home rule, §§36-35-1 to 36-35-8.
Municipal street improvements, §§36-39-1 to 36-39-34.
Municipal training, §§36-45-1 to 36-45-9.
Planning.
Coordinated and comprehensive planning by counties and municipalities, §§36-70-1 to 36-70-5.
Redevelopment.
Powers of counties and municipalities generally, §§36-44-1 to 36-44-23.

TOWNS —Cont'd
Zoning.
Procedures generally, §§36-66-1 to 36-66-6.

TRAFFICKING.
Labor or sexual servitude.
Trafficking of persons for.
Bureau of investigation.
Duty to identify and investigate violations, §35-3-4.
Subpoena power for investigating violations, §35-3-4.3.
Training law enforcement officers investigating crimes involving, §35-1-16.

TRAFFIC LAWS.
Firefighters.
Obedience to authorized persons directing traffic.
Volunteers directing traffic in emergencies, §35-1-11.
Law enforcement officers.
Nomenclature of municipal and county police departments, §35-10-11.
Obedience to authorized persons directing traffic.
Volunteers directing traffic in emergencies, §35-1-11.
Vehicles used to enforce.
Nomenclature of municipal and county police departments, §35-10-11.
Obedience to authorized persons directing traffic.
Volunteers directing traffic in emergencies, §35-1-11.

TRANSPORTATION DEPARTMENT.
Cemeteries.
Development of land on which cemetery located.
Permit not required unless human remains relocated, §36-72-14.

TREASURERS.
County treasurers.
General provisions, §§36-6-1 to 36-6-28.

TREBLE DAMAGES.
Municipal and county police departments.
Nomenclature.
Willful violations, §35-10-9.

TRESPASS.
Aircraft.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Boats and other watercraft.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Motor vehicles.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Municipal court jurisdiction.
Criminal trespass, §36-32-10.1.
Property.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.
Railroad cars.
Criminal trespass.
Municipal court jurisdiction, §36-32-10.1.

TRUSTS AND TRUSTEES.
Municipal corporations.
Cemeteries.
Funds donated to cemetery.
Municipal corporation as trustee of, §36-37-5.
Receipt of cemetery or burial lots in trust, §36-37-4.
Donated or gifted property.
Authority of municipal corporations to serve as trustees for, §36-37-3.

TURGID STATE.
Male genitals in discernibly turgid state.
Definitions.
Nudity, §36-60-3.

TV.
Cable television.
County regulation, §§36-18-1 to 36-18-5.

U

UNAPPREHENDED MURDER OR RAPE SUSPECTS.
State alert system, §35-3-190.

UNCLOTHED GENITALS.
Sexual conduct.
Defined, §36-60-3.

UNDERCOVER AGENTS.
Antiterrorism task force, §35-3-64.

UNIDENTIFIED HUMAN CORPSES.
Georgia crime information center.
Obtaining fingerprints, §35-3-33.
Missing children information center.
Powers and duties.
Identification of corpses, §35-3-82.
State criminal justice agencies.
Duties.
Corpse identification, §35-3-36.

UNIFORMS.
Security guard division of the department of public safety, §35-2-72.

UNITED STATES.
Annexation.
Unincorporated islands.
Preclearance by justice department, §36-36-92.
Local government.
Debts under federal statute.
Relief from or composition of.
Prohibited, §36-80-5.
Special policemen.
Appointment of law enforcement officer of United States as officer in this state, §35-9-15.

UNIVERSITIES AND COLLEGES.
Municipal corporations.
Streets adjacent to or through institutions of higher learning.
Closing in municipal corporations having population of 350,000 or more, §36-30-12.

UNIVERSITY SYSTEM OF GEORGIA.
Emergencies.
Mutual aid.
General provisions, §§36-69-1 to 36-69-10.

UNMARKED CARS.
State patrol.
Retired vehicles.
Training use, §35-2-57.

URBAN DEVELOPMENT.
Eminent domain.
Requirements to exercise power, §36-61-3.1.

URBAN REDEVELOPMENT, §§36-61-1 to 36-61-19.
Appropriations.
Powers of municipalities and counties, §36-61-8.
Bond issues, §36-61-12.
Definition of bonds, §36-61-2.
Legal investments, §36-61-13.
Powers of municipalities and counties, §36-61-12.
Tax exemption, §36-61-12.
Citation of law.
Short title, §36-61-1.
Conflicts of interest.
Interest in redevelopment project.
Acquisition by public official or employee or employee of redevelopment agency, §36-61-19.
Definitions, §36-61-2.
Dwellings unfit for human habitation.
Repair, closing and demolition.
Ordinances relating to, §36-61-11.
Eminent domain.
Powers of municipalities and counties, §36-61-9.
Exemptions from levy and sale.
Property of municipality or county, §36-61-14.
Findings of legislature, §36-61-3.
Housing authorities.
Commissioners and officers.
Eligibility for other office, §36-61-19.
Defined, §36-61-2.
Powers.
Delegation by counties and municipalities, §36-61-17.
Investments.
Bond issues.
Legal investments, §36-61-13.
Powers of municipalities and counties, §36-61-8.
Legislative declaration, §36-61-3.
Encouragement of private enterprise, §36-61-4.
Local governing body.
Defined, §36-61-2.
Notice.
Disposal of real property in urban redevelopment area, §36-61-10.
Eminent domain.
Exercise of power, §36-61-9.
Urban redevelopment plan.
Hearing on, §36-61-7.

URBAN REDEVELOPMENT —Cont'd
Powers of municipalities and counties, §§36-61-8, 36-61-16.
Bond issues, §36-61-12.
Delegation to redevelopment agency or housing authority, §36-61-17.
Dwellings unfit for human habitation.
Repair, closing and demolition.
Ordinances relating to, §36-61-11.
Eminent domain, §36-61-9.
Exercise, §36-61-17.
Resolution of necessity as prerequisite, §36-61-5.
Formulation of workable program, §36-61-6.
Real property, §36-61-10.
Presumptions.
Title of purchaser of property from municipality or county, §36-61-15.
Private enterprise.
Encouragement, §36-61-4.
Public bodies.
Powers, §36-61-16.
Purposes of provisions.
Formulation of workable program, §36-61-6.
Real property.
Powers of municipalities and counties as to, §36-61-10.
Title.
Purchaser of property from municipality or county.
Presumption as to title, §36-61-15.
Resolution of necessity.
Prerequisite to exercise of powers, §36-61-5.
Tax exemptions.
Bonds, §36-61-12.
Property of municipality or county, §36-61-14.
Title of law.
Short title, §36-61-1.
Urban redevelopment agencies, §36-61-18.
Board of commissioners, §36-61-18.
Conflicts of interest.
Official or employee of agency.
Acquisition of interest in redevelopment project, §36-61-19.
Creation, §36-61-18.
Defined, §36-61-2.
Delegation of powers by municipalities and counties, §36-61-17.
Reports.
Annual report, §36-61-18.

URBAN REDEVELOPMENT —Cont'd
Urban redevelopment plan.
Approval, §36-61-7.
Defined, §36-61-2.
Formulation, §36-61-7.
Hearing, §36-61-7.
Notice, §36-61-7.
Modification, §36-61-7.
Veterans' organizations.
Exchange of real property with, §36-61-10.

URBAN REDEVELOPMENT LAW.
General provisions, §§36-61-1 to 36-61-19.
Short title, §36-61-1.

URBAN RESIDENTIAL FINANCE AUTHORITIES, §§36-41-1 to 36-41-13.
Audits.
Annual audit, §36-41-13.
Bond issues, §36-41-8.
Pledge of assets for payment of bonds, §36-41-9.
Powers of authorities, §36-41-5.
Public debt.
Bonds or obligations not to constitute, §36-41-10.
Refunding bonds, §36-41-8.
Tax exemption, §36-41-11.
Citation of act.
Short title, §36-41-1.
Competition with Georgia residential finance authority, §36-41-12.
Creation, §36-41-4.
Definitions, §36-41-3.
Eligible households.
Defined, §36-41-3.
Guidelines for determination of eligibility, §36-41-5.
Loans to, §36-41-6.
Eminent domain.
Authorities not to have power, §36-41-5.
Findings of legislature, §36-41-2.
Georgia residential finance authority.
Competition with, §36-41-12.
Governing boards, §36-41-4.
Interest.
Mortgages or security interests.
Acquisition by authorities.
Rates of interest, §36-41-7.
Investments.
Bonds deemed authorized investments, §36-41-8.

URBAN RESIDENTIAL FINANCE AUTHORITIES —Cont'd
Legislative declaration, §36-41-2.
Lending institutions.
Defined, §36-41-3.
Loans to, §36-41-6.
Loans, §36-41-6.
Mortgages.
Defined, §36-41-3.
Purchase of mortgages or participations therein, §36-41-7.
Powers, §36-41-5.
Qualified housing sponsors.
Defined, §36-41-3.
Loans to, §36-41-6.
Resolution activating authority, §36-41-4.
Rules and regulations, §36-41-4.
Security interests.
Defined, §36-41-3.
Purchase of security interests or participations therein, §36-41-7.
Short title, §36-41-1.
Taxation.
Exemptions, §36-41-11.
Title of act.
Short title, §36-41-1.

URBAN RESIDENTIAL FINANCE AUTHORITIES ACT FOR LARGE MUNICIPALITIES.
General provisions, §§36-41-1 to 36-41-13.
Short title, §36-41-1.

V

VETERANS' AFFAIRS.
Urban redevelopment.
Real property exchanges with veterans' organization, §36-61-10.

VICTIM SERVICES COMMISSION, §§35-6-1 to 35-6-4.

VICTIMS OF CRIMES.
Compensation.
Georgia crime victims compensation board.
Criminal justice coordinating council.
Appointment of committees, §35-6A-4.
Rules adoption, §35-6A-4.
Ombudsman program.
Establishment by victims services commission, §35-6-3.

VICTIMS OF CRIMES —Cont'd
State victim services commission, §§35-6-1 to 35-6-4.
Victim assistance programs.
Inspection of books, records, income and expenditures, §35-6-4.
Victim services commission, §§35-6-1 to 35-6-4.
Compensation or expense reimbursement.
Service without, §35-6-2.
Created, §35-6-1.
Duties, §35-6-3.
Inspection of victim assistance programs' books, records, income and expenditures, §35-6-4.
Meetings, §35-6-2.
Membership, §35-6-2.
Officers, §35-6-2.
Ombudsman program.
Establishment, §35-6-3.
Powers, §35-6-3.
Quorum, §35-6-2.
Responsibility, §35-6-1.
State auditor.
Assistance to commission in discharging duties, §35-6-4.
Terms, §35-6-2.
Victims services ombudsman program.
Establishment by victims services commission, §35-6-3.

VIDEO GAMES.
Computer or electronic pornography and child exploitation, §35-3-4.1.

VILLAGES.
Abandoned cemeteries and burial grounds, §§36-72-1 to 36-72-16.
Annexation.
General provisions, §§36-36-1 to 36-36-92.
Bond issues.
Municipal bonds generally, §§36-38-1 to 36-38-23.
Budgets and audits.
Local government budgets and audits generally, §§36-81-1 to 36-81-20.
Definition, §36-30-1.
Development authorities.
County and municipal development authorities, §§36-62-1 to 36-62-14, 36-62A-20 to 36-62A-22.
Development impact fees.
General provisions, §§36-71-1 to 36-71-13.

VILLAGES —Cont'd
Emergencies.
Mutual aid, §§36-69-1 to 36-69-10.
Interest rates on obligations other than general obligation bonds.
Local government and political subdivisions, §§36-82-120 to 36-82-124.
Interlocal risk management agencies.
General provisions, §§36-85-1 to 36-85-20.
Local government authorities registration, §36-80-16.
Local government budgets and audits.
General provisions, §§36-81-1 to 36-81-20.
Local government investment pool.
General provisions, §§36-83-1 to 36-83-8.
Municipal courts.
General provisions, §§36-32-1 to 36-32-40.
Municipal home rule.
General provisions, §§36-35-1 to 36-35-8.
Municipal street improvements.
General provisions, §§36-39-1 to 36-39-34.
Municipal training.
General provisions, §§36-45-1 to 36-45-9.
Planning.
Coordinated and comprehensive planning by counties and municipalities, §§36-70-1 to 36-70-5.
Registration.
Local government authorities, §36-80-16.
Resource recovery development authorities, §§36-63-1 to 36-63-11.
Zoning.
Procedures generally, §§36-66-1 to 36-66-6.

VOLUNTEERS.
Traffic control.
Volunteers directing traffic in emergencies, §35-1-11.

VOTING RIGHTS ACT OF 1965.
Attorney general.
Copy of submission to United States department of justice pursuant to federal voting rights act.
Receipt of copy by attorney general, §36-60-11.

W

WAIVER.
Fresh pursuit.
Law enforcement officers from Alabama, Florida, North Carolina, South Carolina, and Tennessee.
Hearing before judicial officer.
Waiver of right to hearing, §35-1-15.
Sovereign immunity.
Motor vehicles.
Claims against local government entities.
Waiver of immunity, §§36-92-1 to 36-92-5.

WAREHOUSES.
Enterprise zone employment generally, §§36-88-1 to 36-88-10.

WAR ON TERRORISM LOCAL ASSISTANCE ACT.
General provisions, §§36-75-1 to 36-75-13.
Short title, §36-75-1.

WATCHMEN.
Security guard division of department of public safety, §§35-2-70 to 35-2-75.

WATER AND WASTEWATER TREATMENT PLANTS.
Industry and government contracts, §36-60-2.
Privately constructed water or sewage system.
Exempt water or wastewater systems, §36-80-21.
Ownership rights, §36-80-21.
Sunset provisions, §36-80-21.

WATER AUTHORITIES.
Development impact fees.
Applicability of provisions to water authorities, §36-71-13.

WATER RESOURCES.
Resource recovery development authorities.
General provisions, §§36-63-1 to 36-63-11.

WATER SUPPLY.
Counties.
Purchase of materials used in construction.
Purchase from county not to be required, §36-1-23.
Water storage facility projects.
Powers of local authorities and local governing authorities, §§36-91-100 to 36-91-102.
Cutoff of water to premises.
Indebtedness of prior owner, occupant or lessee, §36-60-17.
Debtors and creditors.
Cutoff of water to premises because of indebtedness of prior owner, occupant or lessee prohibited, §36-60-17.
Eminent domain.
Local authorities or local governing authorities, §36-91-101.
Liens.
Unpaid charges for water service.
Limited liens, §36-60-17.
Local authorities and local governing authorities.
Water storage facility projects, §§36-91-100 to 36-91-102.
Alternative to other methods, §36-91-102.
Assistance for project, obtaining, §36-91-101.
Contracts to procure permits, licenses and permissions.
Authority to enter into, §36-91-101.
Costs of projects, payment, §36-91-101.
Definitions, §36-91-100.
Eminent domain, exercising authority, §36-91-101.
Evaluation of project.
Determining appropriate levels of state, local and private participation.
Lead local authority, §36-91-102.
Grants or loans to operators of projects, §36-91-101.

WATER SUPPLY —Cont'd
Local authorities and local governing authorities —Cont'd
Water storage facility projects —Cont'd
Interviews with respondents to request for proposal, §36-91-102.
Lead local authority.
Defined, §36-91-100.
Designation, §36-91-102.
Evaluation of project.
Determining appropriate levels of state, local and private participation, §36-91-102.
Requests for proposals, issuance, §36-91-102.
Negotiations with selected respondents to proposals, §36-91-102.
Notice of requests for proposals, §36-91-102.
One or more authorities agreeing to participate in project, §36-91-102.
Permits, licenses and permissions.
Procuring, §36-91-101.
Planning, finance, leasing, operation, maintenance of projects.
Utilization of article procedures for, §36-91-102.
Public comment upon proposals, §36-91-102.
Public hearing upon proposals, §36-91-102.
Requests for proposals.
Issuance by lead local authority, §36-91-102.
Selection of respondent or respondents to proposal, §36-91-102.
Municipal corporations.
Power to acquire and construct, §36-34-5.
Water storage facility projects.
Powers of local authorities and local governing authorities, §§36-91-100 to 36-91-102.
Projects.
Local authorities and local governing authorities.
Powers, §§36-91-100 to 36-91-102.
Quarries.
Adverse impact by quarry prohibited, §36-60-22.

WATER SUPPLY —Cont'd
Reservoirs.
Local authorities and local governing authorities.
Water storage facility projects, §§36-91-100 to 36-91-102.
Single-family residential property owners or farms.
Water supplied by private well.
Grounds for requiring connection to public water system, §36-60-17.1.

WATER WELLS.
Environmental protection division.
Quarry water oversight duties, §36-60-22.
Quarries.
Adverse impact by quarry prohibited, §36-60-22.
Single-family residential property owners or farms.
Water supplied by private well.
Grounds for requiring connection to public water system, §36-60-17.1.

WEAPONS.
Bureau of investigation.
Agents.
Disability in line of duty.
Retention of badge and weapon, §35-3-11.
Powers of agents to carrying firearms, §35-3-8.
Capitol police division.
Carrying of firearms authorized, §35-2-122.
Crime information center.
Handguns, notification to dealer of individual's prohibition on purchasing or possession.
Hospitalization records to be provided, §35-3-37.
Law enforcement officers.
Disability arising in line of duty.
Retention of weapon and badge.
Members of uniform division of department of public safety, §35-2-49.1.
TASERS and electronic control weapons.
Use, requirements, policies, establishment, training, §35-8-26.

WEAPONS —Cont'd
National instant criminal background check system.
Crime information center, providing information, §35-3-34.
NICS.
National instant criminal background check system.
Crime information center, providing information, §35-3-34.
State patrol.
Disability in line of duty.
Retention of weapon and badge, §35-2-49.1.
Retirement.
Receipt of revolver upon, §35-2-42.
Retention by certain members upon retirement, §35-2-49.
TASERS and electronic control weapons.
Law enforcement officers.
Use, requirements, policies, establishment, training, §35-8-26.

WIRELESS COMMUNICATIONS.
Advanced broadband collocation act, §§36-66B-1 to 36-66B-4.

WITNESSES.
Claims against local government entities.
Local government officer or employee as witness, §36-92-3.
Expert witnesses.
Fees.
Development impact fees.
System improvement costs, §36-71-2.

WORKERS' COMPENSATION.
Claims against local government entities.
No waiver of remedy under act, §36-92-3.
Firefighters.
County and municipality volunteer firefighters, §36-60-23.

Y

YEAR.
Local government.
Fiscal year.
Defined, §36-81-2.
Establishment, §36-81-3.

Z

ZONING, §§36-66-1 to 36-66-6.
Agency decisions.
Defined, §36-66-3.
Hearings on proposed local government zoning decisions, §§36-66-4, 36-66-5.
Reconsideration of defeated rezoning actions, §36-66-4.
Annexation, §36-66-4.
Land use following rezoning in conjunction with or subsequent to annexation.
Resolution of disputes, §36-36-11.
Backdated licenses or permits.
Issuance by county or municipal officers or employees.
Prohibited, §36-60-26.
Citation of law.
Short title, §36-66-1.
Conflicts of interest, §§36-67A-1 to 36-67A-6.
Campaign contributions.
Disclosure, §36-67A-3.
Definitions, §36-67A-1.
Disclosure of campaign contributions, §36-67A-3.
Disclosure of financial interests, §36-67A-2.
Rezoning action.
Defined, §36-67A-1.
Special master.
Appointment for hearing where governing authority unable to attain quorum, §36-67A-5.
Violations of provisions, §36-67A-4.
Voting.
When not prohibited, §36-67A-6.
Coordinated and comprehensive planning by counties and municipalities.
Effect of provisions on county and municipal zoning powers, §36-70-5.
Definitions, §36-66-3.
Conflicts of interest, §36-67A-1.

ZONING —Cont'd
Halfway house, drug rehabilitation center or other drug dependent treatment facility.
Zoning decision relating to location.
Public hearing, §36-36-4.
Hearings.
Local government taking action resulting in zoning decision, §36-66-4.
Legislative declaration, §36-66-2.
Mediation.
Disputes over rezoning of annexed property, §36-36-11.
Military affairs.
Land near military installations, §36-66-6.
Notice.
Annexed property.
Notice to county governing authority, §36-36-11.
Zoning decisions.
Hearings on proposed local government zoning decisions, §36-66-4.
Powers of local governments, §§36-66-2, 36-66-5.
Publication.
Notice of hearing on zoning decision, §36-36-4.
Rezoning.
Zoning decision by local government, §36-36-4.
Sign placed on property.
Notice of hearing on zoning decision, §36-36-4.
Title of law.
Short title, §36-66-1.

ZONING PROCEDURES LAW.
General provisions, §§36-66-1 to 36-66-6.
Short title, §36-66-1.

ZOOS.
Municipal corporations.
Leases and contracts for operation and maintenance.
Municipal corporations having population of more than 300,000, §36-34-5.3.

OFFICIAL CODE OF GEORGIA ANNOTATED

2018 Supplement

Including Acts of the 2018 Regular Session of the General Assembly

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®

Published Under Authority of the State of Georgia

Volume 27

2012 Edition

Title 35. Law Enforcement Officers and Agencies

Title 36. Local Government

Including Annotations to the Georgia Reports
and the Georgia Appeals Reports

MERCER UNIVERSITY
AUG 29 2018
WALTER F. GEORGE
LAW LIBRARY

Place in Pocket of Corresponding Volume of Main Set

LexisNexis®
Charlottesville, Virginia

Copyright © 2013—2018
by
The State of Georgia

All rights reserved.

ISBN 978-0-327-11074-3 (set)
ISBN 978-0-7698-4590-6

394834

(Pub. 41805)

THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2018 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through May 12, 2018. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through May 12, 2018.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Seventh Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2018 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2018 supplement pamphlets and in the bound volumes of the Code.

Contacting LexisNexis®:

Visit our Website at http://www.lexisnexis.com for an online bookstore, technical support, customer service, and other company information.

If you have questions or suggestions concerning the Official Code of Georgia Annotated, please write or call toll free at 1-800-833-9844, fax at 1-518-487-3584, or email us at Customer.Support@lexisnexis.com. Direct written inquiries to:

LexisNexis®
Attn: Official Code of Georgia Annotated
701 East Water Street
Charlottesville, Virginia 22902-5389

TITLE 35

LAW ENFORCEMENT OFFICERS AND AGENCIES

Chap.

1. General Provisions, 35-1-1 through 35-1-22.

2. Department of Public Safety, 35-2-1 through 35-2-164.

3. Georgia Bureau of Investigation, 35-3-1 through 35-3-204.

6A. Criminal Justice Coordinating Council, 35-6A-1 through 35-6A-14.

8. Employment and Training of Peace Officers, 35-8-1 through 35-8-27.

CHAPTER 1

GENERAL PROVISIONS

Sec.

35-1-2. Examination of sexual assault victims; reports.

35-1-9. Utilization of alarm verification required.

35-1-13. Completion and transmission of reports from victims of identity fraud.

35-1-18. Prohibition on minimum waiting periods for initiating missing person report.

35-1-19. Disclosure of arrest booking photographs prohibited.

35-1-20. Retention of weapons by officers following employment.

Sec.

35-1-21. Development of guidelines and procedures for training in identifying domestic terrorism and reporting information to Georgia Information Sharing and Analysis Center.

35-1-22. Prohibition on law enforcement retaining license plate data obtained from automated license plate recognition systems; limited use of data; public disclosure prohibited.

35-1-2. Examination of sexual assault victims; reports.

(a) As used in this Code section, the term:

(1) "Division" means the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(2) "Medical examination" means an examination pursuant to subsection (c) of Code Section 16-6-1 or subsection (c) of Code Section 16-6-2.

(b) When a forensic medical examination is performed, evidence is collected, and the alleged victim has requested that law enforcement

officials be notified, the individual performing such exam, or his or her designee, shall notify the appropriate law enforcement agency of the collection of such evidence and provide a summary of all rights guaranteed to the alleged victim pursuant to the Crime Victims' Bill of Rights established pursuant to Code Section 17-17-1, et seq., as provided by the Criminal Justice Coordinating Council. At the time of the examination, no alleged victim shall be required to assign or waive any rights afforded to him or her in the Crime Victims' Bill of Rights or that might prevent the alleged victim from seeking relief from the Crime Victims Compensation Board. Law enforcement officials shall take possession of such evidence no later than 96 hours of being notified.

(c) It shall be the duty of every law enforcement officer who takes possession of the evidence as provided in subsection (b) of this Code section to ensure that such evidence is submitted to the division within 30 days of it being collected, in accordance with the procedures established by the division.

(d) When a forensic medical examination was performed before July 1, 2016, evidence was collected, and the alleged victim requested that law enforcement officials be notified, the individual who performed such exam, or his or her designee, shall notify the appropriate law enforcement agency of the collection of such evidence on or before July 15, 2016, and law enforcement officials shall take possession of such evidence on or before July 31, 2016. It shall be the duty of every law enforcement officer who takes possession of the evidence as provided in this Code section to ensure that such evidence is submitted to the division by August 31, 2016, in accordance with the procedures established by the division.

(e) It shall be the duty of every law enforcement agency to create a list of evidence resulting from a forensic medical examination that is in such agency's possession on August 1, 2016, identifying such evidence as needing to be tested and submitting such listing of information to the division by August 15, 2016.

(f) A failure to comply with the provisions of this Code section shall not affect the admissibility of evidence collected from a forensic medical examination.

(g) Beginning December 1, 2016, the division shall issue an annual report detailing the number of cases for which it has tested evidence pursuant to this Code section and the number of cases that are awaiting testing. Such report shall be provided to the executive counsel of the Governor, the Speaker of the House of Representatives, the Lieutenant Governor, the members of the House Committee on Judiciary, Non-civil, the members of the Senate Judiciary Committee, the House Committee

on Health and Human Services, and the Senate Health and Human Services Committee and posted online at the Georgia Bureau of Investigation's website. (Code 1981, § 35-1-2, enacted by Ga. L. 2016, p. 145, § 2/SB 304; Ga. L. 2017, p. 774, § 35/HB 323.)

Effective date. — This Code section became effective July 1, 2016.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "afforded to him or her" for "afforded to them" near the end of subsection (b); and substituted "Senate Judiciary Committee" for "Senate Judiciary, Non-civil Committee" in the middle of the second sentence of subsection (g).

Cross references. — Sexual assault protocol, T. 15, C. 24. Sexual offense, T. 16, C. 6.

Editor's notes. — Former Code Section 35-1-2, pertaining to passenger motor vehicle for warden of Georgia State Prison, was repealed by Ga. L. 2007, p. 114, § 1, effective July 1, 2007. The former Code section was based on Ga. L. 1937, p. 322, art. 2, § 13; Ga. L. 1952, p. 3, § 1.

Ga. L. 2016, p. 145, § 1/SB 304, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Compassionate Care for Victims of Sexual Assault Act.'"

35-1-8. Acquisition, collection, classification, and preservation of information assisting in identifying deceased persons and locating missing persons.

Cross references. — Prohibition on minimum waiting periods for initiating missing person report, § 35-1-18.

35-1-9. Utilization of alarm verification required.

(a) As used in this Code section, the term:

(1) "Alarm monitoring company" means any person, company, corporation, partnership, business, or a representative or agency thereof authorized to provide alarm monitoring services for burglar alarm systems, fire alarm systems, or other similar electronic security systems whether such systems are maintained on commercial business property, public property, or individual residential property.

(2) "Alarm verification" means a reasonable attempt by an alarm monitoring company to contact the alarm site or alarm user, by telephone or other electronic means, to determine whether a burglar alarm signal is valid prior to requesting law enforcement to be dispatched to the location and, where the initial attempted contact cannot be made, a second reasonable attempt to make such contact utilizing a different telephone number or electronic address or number.

(b) Except as provided in subsection (c) of this Code section, an alarm monitoring company shall utilize a system providing for alarm verification of all alarm signals.

(c) Alarm verification shall not be required in the case of a fire alarm or a panic or robbery-in-progress alarm or in cases where a crime-in-progress has been verified to be true by video or audible means. (Code 1981, § 35-1-9, enacted by Ga. L. 2013, p. 750, § 1/HB 59.)

Effective date. — This Code section became effective July 1, 2013.

Editor's notes. — This Code section formerly pertained to the prohibition of inspecting or copying records of law enforcement agency for commercial solicitation and was based on Ga. L. 1999, p. 1868, § 1. The former Code section was repealed by Ga. L. 1999, p. 809, § 2, effective July 1, 1999.

35-1-13. Completion and transmission of reports from victims of identity fraud.

Notwithstanding any other provision of law, any law enforcement agency that receives a report from a resident of this state that such person has been the victim of identity fraud shall prepare an incident report and transmit the same to the Georgia Bureau of Investigation identity fraud repository, as provided in Code Section 16-9-123, notwithstanding the fact that such person's identity may have been used solely to commit one or more criminal offenses beyond the jurisdiction of this state. Copies of such incident reports shall be referred from the office of the Attorney General to the Georgia Crime Information Center as provided in Chapter 3 of this title and to any jurisdiction in which such identity has been used. (Code 1981, § 35-1-13, enacted by Ga. L. 2002, p. 551, § 4; Ga. L. 2015, p. 1088, § 25/SB 148.)

The 2015 amendment, effective July 1, 2015, substituted "Georgia Bureau of Investigation" for "Governor's Office of Consumer Affairs" in the middle of the first sentence, and substituted "office of the Attorney General" for "Governor's Office of Consumer Affairs" near the beginning of the second sentence.

35-1-18. Prohibition on minimum waiting periods for initiating missing person report.

No law enforcement agency shall implement a policy or practice which mandates a minimum waiting period before initiating a missing person report with such agency; provided, however, that it shall remain within the discretion of the law enforcement agency to determine what action, if any, is required in response to such a report. (Code 1981, § 35-1-18, enacted by Ga. L. 2014, p. 704, § 2/SB 23.)

Effective date. — This Code section became effective July 1, 2013. See Editor's notes for effective dates that precede Governor's approval.

Cross references. — Kidnapping, § 16-5-40. Immediate investigation for missing person with Alzheimer's disease, § 35-1-8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code

Section 35-1-18, as enacted by Ga. L. 2014, p. 742, § 1/HB 845, was redesignated as Code Section 35-1-19.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-1-19. Disclosure of arrest booking photographs prohibited.

(a) As used in this Code section, the term "booking photograph" means a photograph or image of an individual taken by an arresting law enforcement agency for the purpose of identification or taken when such individual was processed into a jail.

(b) Except as provided in Code Section 50-18-77 and booking photographs required for publication as set forth in Titles 16 and 40, for the State Sexual Offender Registry, and for use by law enforcement agencies for administrative purposes, an arresting law enforcement agency or agent thereof shall not post booking photographs to or on a website.

(c) An arresting law enforcement agency shall not provide or make available a copy of a booking photograph in any format to a person requesting such photograph if:

(1) Such booking photograph may be placed in a publication or posted to a website or transferred to a person to be placed in a publication or posted to a website; and

(2) Removal or deletion of such booking photograph from such publication or website requires the payment of a fee or other consideration.

(d) When a person requests a booking photograph, he or she shall submit a statement affirming that the use of such photograph is in compliance with subsection (c) of this Code section. Any person who knowingly makes a false statement in requesting a booking photograph shall be guilty of a violation of Code Section 16-10-20. (Code 1981, § 35-1-19, enacted by Ga. L. 2014, p. 742, § 1/HB 845.)

Effective date. — This Code section became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 35-1-18, as enacted by Ga. L. 2014, p. 742, § 1/HB 845, was redesignated as Code Section 35-1-19.

35-1-20. Retention of weapons by officers following employment.

(a) As used in this Code section, the term:

(1) "Honorable conditions" means conditions of having satisfied, met, or exceeded the conduct and performance standards established by the state entity for sworn police officers.

(2) "State entity" means any state department, agency, board, bureau, office, commission, public corporation, system, or authority.

(b) The governing authority of each municipality and county in this state and each board of education which employs sworn police officers who are certified by the Georgia Peace Officer Standards and Training Council may adopt policies under which such sworn police officers, upon their retirement from employment by such municipality, county, or board of education or upon leaving such employment as a result of a disability arising in the line of duty, shall be entitled, as part of their compensation, to retain their weapon and badge.

(c) Except where otherwise provided for by law for a state entity, each state entity which employs sworn police officers who are certified by the Georgia Peace Officer Standards and Training Council shall adopt rules, regulations, or policies under which such sworn police officers, upon their retirement from employment by such state entity or upon leaving such employment as a result of a disability arising in the line of duty, shall be entitled, as part of their compensation, to retain their weapon and badge; provided, however, that such sworn police officers retire or leave under honorable conditions. (Code 1981, § 35-1-20, enacted by Ga. L. 2016, p. 823, § 1/SB 263; Ga. L. 2017, p. 24, § 2/SB 18.)

Effective date. — This Code section became effective July 1, 2016.

The 2017 amendment, effective July 1, 2017, added subsection (a); designated the previously existing provisions of this Code section as subsection (b); in subsection (b), substituted "sworn police officers" for "sworn officers" in the middle, and substituted "their" for "his or her" twice near the end; and added subsection (c).

35-1-21. Development of guidelines and procedures for training in identifying domestic terrorism and reporting information to Georgia Information Sharing and Analysis Center.

(a) The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety Training Center shall establish guidelines and procedures for the incorporation of training materials and information in methods for:

(1) Identifying and reporting activity that may lead to domestic terrorism;

(2) Combating domestic terrorism; and

(3) Individuals, law enforcement officials, and personnel within state agencies and departments and local governments to provide

information to the Georgia Information Sharing and Analysis Center to report activity that may lead to domestic terrorism.

(b) The guidelines and procedures listed in subsection (a) of this Code section shall be for use by law enforcement training centers monitored by the Georgia Peace Officer Standards and Training Council and monitored and funded by the Georgia Public Safety Training Center in all courses for which they have responsibility and oversight. (Code 1981, § 35-1-21, enacted by Ga. L. 2017, p. 536, § 5-1/HB 452.)

Effective date. — This Code section became effective July 1, 2017.

Editor's notes. — Ga. L. 2017, p. 536, § 1-1/HB 452, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Protect Georgia Act.'"

Law reviews. — For article on the 2017 enactment of this Code section, see 34 Ga. St. U.L. Rev. 17 (2017).

35-1-22. Prohibition on law enforcement retaining license plate data obtained from automated license plate recognition systems; limited use of data; public disclosure prohibited.

(a) As used in this Code section, the term:

(1) "Automated license plate recognition system" means one or more high-speed cameras combined with computer algorithms used to convert images of license plates into computer readable data.

(2) "Captured license plate data" means the global positioning device coordinates, date and time, photograph, license plate number, and any other data captured by or derived from an automated license plate recognition system or any other source.

(3) "Law enforcement agency" means the Department of Public Safety, the Department of Transportation, and any other state, federal, local, public transit, school, college, or university agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, toll violation, regulatory, game, or controlled substance laws.

(4) "Law enforcement purpose" means the investigation of an offense or activity initiated by a law enforcement agency.

(5) "Person" means an individual, corporation, company, partnership, firm, association, joint venture, or any other unincorporated association or group.

(b) Law enforcement agencies may collect captured license plate data. Such data shall be stored immediately upon collection and not accessed except for a law enforcement purpose. All such data collected shall be destroyed no later than 30 months after such data were

originally collected unless such data are the subject matter of a toll violation or for a law enforcement purpose.

(c) Law enforcement agencies may exchange or share captured license plate data with other law enforcement agencies for law enforcement purposes.

(d)(1) Any person who knowingly requests, uses, obtains, or attempts to obtain captured license plate data of a law enforcement agency under false pretenses or for any purpose other than for a law enforcement purpose shall for each such offense, upon conviction thereof, be guilty of a misdemeanor of a high and aggravated nature.

(2) Nothing in this Code section shall be construed to preclude a law enforcement agency from contracting with a person to hold and maintain captured license plate data for such law enforcement agency; provided, however, that such person shall be subject to the policies of the law enforcement agency and paragraph (1) of this subsection.

(e) Any law enforcement agency deploying an automated license plate recognition system shall maintain policies for the use and operation of such system, including but not limited to policies for the training of law enforcement officers in the use of captured license plate data consistent with this Code section.

(f) Captured license plate data collected by a law enforcement agency shall not be subject to public disclosure pursuant to Article 4 of Chapter 18 of Title 50. (Code 1981, § 35-1-22, enacted by Ga. L. 2018, p. 758, § 1/HB 79.)

Effective date. — This Code section became effective July 1, 2018.

CHAPTER 2

DEPARTMENT OF PUBLIC SAFETY

Article 1

General Provisions

Sec.

35-2-1. Creation of Board of Public Safety; composition; appointment and terms of office of members.

35-2-15. Off-duty use of motor vehicles and other equipment by certain law enforcement officers; conditions for use; rules and regulations.

Article 2

Georgia State Patrol

Sec.

35-2-41.1. Donation or conveyance of property, equipment, or services to the department; procedure.

Sec.
35-2-56. Use of motor vehicles or other equipment by members of Uniform Division [Repealed].

Article 5

Motor Carrier Compliance Division

35-2-101. Jurisdiction; duties and powers; use of dogs to detect controlled substances.

Article 6

Capitol Police Division

35-2-123. Use of vehicles by off-duty law enforcement officer [Repealed].

Article 8

Office of Public Safety Officer Support

35-2-160. (For effective date, see note.) Definitions.

Sec.
35-2-161. (For effective date, see note.) Office of Public Safety Officer Support established.
35-2-162. (For effective date, see note.) Support coordinator.
35-2-163. (For effective date, see note.) Peer counseling and critical incident support services; certification; employment of necessary staff.
35-2-164. (For effective date, see note.) Provision and designation of office space, personnel, supplies, and materials; policies and procedures.

ARTICLE 1

GENERAL PROVISIONS

35-2-1. Creation of Board of Public Safety; composition; appointment and terms of office of members.

(a) There is created a Board of Public Safety which shall establish the general policy to be followed by the Department of Public Safety.

(b) The board shall consist of 16 members:

(1) The following four members serve as follows:

(A) The Governor, ex officio, who shall be chairperson of the board;

(B) An appointee of the Governor who shall not be the Attorney General;

(C) The official in charge of the Department of Corrections, ex officio; and

(D) The commissioner of community supervision, ex officio.

(2) Five members shall be selected as follows:

(A) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia Sheriffs Association; the first representative shall serve an initial term ending on January 20, 1975, each subsequent term being three years;

(B) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia Association of Chiefs of Police; the first representative shall serve an initial term ending on January 20, 1974, each subsequent term being three years;

(C) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the District Attorneys Association of Georgia; the first representative shall serve an initial term ending on January 20, 1973, each subsequent term being three years;

(D) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia State Firemen's Association; the first representative shall serve an initial term ending on January 20, 1984, each subsequent term being for three years; and

(E) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia Association of Fire Chiefs; the first representative shall serve an initial term beginning on January 21, 2011, each term being for three years.

(3) Four members shall be selected as follows:

(A) Two members appointed by the Governor. The first appointees shall serve an initial term ending on January 20, 2002. Each subsequent term shall be for three years;

(B) One member appointed by the Lieutenant Governor. The first appointee shall serve an initial term ending on January 20, 2002. Each subsequent term shall be for three years; and

(C) One member appointed by the Speaker of the House of Representatives. The first appointee shall serve an initial term ending on January 20, 2002. Each subsequent term shall be for three years.

(4) By majority vote the board shall appoint three members from the state at large; no person so appointed shall be an officer or employee of any state or local governmental entity at the time of his or her appointment to or during his or her membership on the board. All terms of the three at-large members shall be four years. Any vacancy in the at-large membership shall be filled by the board for the unexpired term.

(c) Appointments made pursuant to paragraph (2) of subsection (b) of this Code section at times when the Senate is not in session shall be effective ad interim. (Ga. L. 1972, p. 1015, §§ 18, 1609; Ga. L. 1981, p.

814, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1999, p. 1211, § 1; Ga. L. 2009, p. 831, § 1/HB 607; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2018, p. 334, § 1/HB 856.)

The 2018 amendment, effective July 1, 2018, substituted "16" for "15" in subsection (b); substituted "four" for "three" in paragraph (b)(1); deleted "and" at the end of subparagraph (b)(1)(B); substituted "; and" for a period at the end of subparagraph (b)(1)(C); and added subparagraph (b)(1)(D).

35-2-15. Off-duty use of motor vehicles and other equipment by certain law enforcement officers; conditions for use; rules and regulations.

(a)(1) Certified law enforcement officers employed by the department may use a department motor vehicle while working an off-duty job if such job requires vested police powers as a condition of employment, has been approved by the commissioner, and has been determined by the commissioner to be in furtherance of the department's mission and service to the state. Department motor vehicles used for off-duty employment shall not be used at any political function.

(2) Except as otherwise provided for in this subsection, department motor vehicles shall be used only in the discharge of official duties.

(3) Any other equipment shall be used only with the express written approval of the commissioner. The commissioner shall adopt rules and regulations governing the use of equipment subject to approval of the Board of Public Safety.

(b) The commissioner, in his or her sole discretion, in granting approval for such off-duty job in which a department motor vehicle is used, prior to the use of such vehicle, shall determine whether the off-duty employer provided for in subsection (a) of this Code section shall reimburse the department for use of the vehicle. When reimbursement is required, such off-duty employer shall enter into a written agreement with the department to pay an amount determined by the commissioner to be sufficient to reimburse the department for the use of the vehicle and to pay the off-duty employee sufficient compensation. Pursuant to such agreement, the department shall pay the employee of the department the compensation earned on off-duty employment whenever such employee performs such service in a department motor vehicle; provided, however, that such compensation shall not be characterized as direct employment compensation but shall be paid as services under contract.

(c) Employees of the department operating a department motor vehicle pursuant to this Code section shall be deemed to be acting within the scope of their official duties and employment within the

meaning of Code Section 50-21-20, et seq., and the commissioner of administrative services shall provide liability coverage for claims arising out of such use. The commissioner shall adopt rules and regulations governing the use of equipment subject to approval of the Board of Public Safety. (Code 1981, § 35-2-15, enacted by Ga. L. 2016, p. 385, § 3/HB 806; Ga. L. 2017, p. 774, § 35/HB 323.)

Effective date. — This Code section became effective April 26, 2016.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "in the discharge" for "in discharge" in paragraph (a)(2); and substituted "a department" for "a departmental" in the first sentence of subsection (b).

ARTICLE 2

GEORGIA STATE PATROL

35-2-41.1. Donation or conveyance of property, equipment, or services to the department; procedure.

(a) Any offer to donate or convey by deed, gift, rent, lease, or other means any property, equipment, or services to the department shall be made in writing through command channels to the commissioner. If the commissioner approves the offer, he or she shall submit a written proposal of the offer to the board for its approval. A copy of the formal proposal shall be forwarded by the commissioner to the Office of Planning and Budget, the Senate Budget and Evaluation Office, and the House Budget and Research Office, any of which may comment on the proposal.

(b) Title to real property shall be in the State of Georgia for the use of the Department of Public Safety. No member of the department shall be authorized to accept any donation or conveyance of property, equipment, or services unless the provisions of this Code section have been complied with and until the board has approved the donation or conveyance. (Code 1981, § 35-2-41.1, enacted by Ga. L. 1985, p. 486, § 3; Ga. L. 2008, p. VO1, § 1-16/HB 529; Ga. L. 2014, p. 866, § 35/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Senate Budget and Evaluation Office" for "Senate Budget Office" and substituted "House Budget and Research Office" for "House Budget Office" in the last sentence of subsection (a).

35-2-56. Use of motor vehicles or other equipment by members of Uniform Division.

Reserved. Repealed by Ga. L. 2016, p. 385, § 4/HB 806, effective April 26, 2016.

Editor's notes. — This Code section was based on Ga. L. 1937, p. 322, art. 2, § 13; Ga. L. 1952, p. 3, § 1; Ga. L. 1992, p. 1310, § 1; Ga. L. 1999, p. 560, § 1.

ARTICLE 5

MOTOR CARRIER COMPLIANCE DIVISION

35-2-101. Jurisdiction; duties and powers; use of dogs to detect controlled substances.

(a) The Motor Carrier Compliance Enforcement Section of the department shall have jurisdiction throughout this state with such duties and powers as are prescribed by law.

(b) The primary duties of the Motor Carrier Compliance Enforcement Section shall be as follows:

(1) Enforcement of laws and regulations relating to the size and the weights of motor vehicles, trailers, and loads as provided for in Article 2 of Chapter 6 of Title 32;

(2) Enforcement of laws and regulations relating to licensing and fuel tax registration requirements and the reporting of violations thereof to the Department of Revenue;

(3) Enforcement of safety standards for motor vehicles and motor vehicle components;

(4) Enforcement of laws relating to hazardous materials carriers;

(5) Enforcement of all state laws on the following properties owned or controlled by the Department of Transportation or the State Road and Tollway Authority: rest areas, truck-weighing stations or checkpoints, wayside parks, parking facilities, toll facilities, and any buildings and grounds for public equipment and personnel used for or engaged in administration, construction, or maintenance of the public roads or research pertaining thereto;

(6) Enforcement of Code Section 16-10-24, relating to obstructing or hindering law enforcement officers;

(7) Directing and controlling traffic on any public road which is part of the state highway system but only in areas where maintenance and construction activities are being performed and at scenes of accidents and emergencies until local police officers or Georgia State Patrol officers arrive and have the situation under control;

(8) Enforcement of Code Sections 32-9-4 and 40-6-54, relating to designation of restricted travel lanes;

(9) Enforcement of Code Section 16-11-43, relating to obstructing highways, streets, sidewalks, or other public passages, on any public road which is part of the state highway system;

(10) Enforcement of Code Section 16-7-43, relating to littering public or private property or waters, on any public road which is part of the state highway system;

(11) Enforcement of Code Section 16-7-24, relating to interference with government property, on any public road which is part of the state highway system; and

(12) Enforcement of any state law when ordered to do so by the commissioner.

(c) In performance of the duties specified in subsection (b) of this Code section, certified law enforcement officers employed by the department or designated by the commissioner shall:

(1) Be authorized to carry firearms;

(2) Exercise arrest powers;

(3) Have the power to stop, enter upon, and inspect all motor vehicles using the public highways for purposes of determining whether such vehicles have complied with and are complying with laws, the administration or enforcement of which is the responsibility of the department;

(4) Have the power to examine the facilities where motor vehicles are housed or maintained and the books and records of motor carriers for purposes of determining compliance with laws, the administration or enforcement of which is the responsibility of the department; and

(5) Exercise the powers generally authorized for law enforcement officers in the performance of their duties or otherwise to the extent needed to protect any life or property when the circumstances demand action.

(d) The commissioner shall authorize law enforcement officers of the Motor Carrier Compliance Enforcement Section to make use of dogs trained for the purpose of detection of drugs and controlled substances while such officers are engaged in the performance of their authorized duties. If such authorized use of such a dog indicates probable cause to indicate the presence of contraband, the officer or officers shall in those circumstances have the full authority of peace officers to enforce the provisions of Article 2 of Chapter 13 of Title 16, the "Georgia Controlled Substances Act," and Article 3 of Chapter 13 of Title 16, the "Dangerous Drug Act"; provided, however, that the department must immediately notify the local law enforcement agency and district attorney of the jurisdiction where a seizure is made. (Code 1981, § 35-2-101, enacted by Ga. L. 2005, p. 334, § 13A-2/HB 501; Ga. L. 2012, p. 580, § 7/HB 865; Ga. L. 2016, p. 385, § 5/HB 806.)

The 2016 amendment, effective April 26, 2016, deleted former subsection (e), which read: "(e)(1) Certified law enforcement officers employed by the Motor Carrier Compliance Enforcement Section may use a department motor vehicle while working an approved off-duty job, provided that:

"(A) The off-duty employment is of a general nature that is the subject of a contract between the off-duty employer and the department and is service in which the use of the department motor vehicle is a benefit to the department or is in furtherance of the department's mission;

"(B) The off-duty employer agrees to pay and does pay to the department an amount determined by the commissioner to be sufficient to reimburse the department for the use of the vehicle and to pay the off-duty employee sufficient compensation. Pursuant to such contract, the department shall pay the employee of the department the compensation earned on off-duty employment whenever such employee performs such service in a department motor vehicle; and

"(C) The commissioner has specifically approved, in writing, the individual use of the vehicle by the employee.

"(2) At no time will an off-duty employee be allowed use of a department motor vehicle at any political function of any kind."

ARTICLE 6

CAPITOL POLICE DIVISION

35-2-123. Use of vehicles by off-duty law enforcement officer.

Reserved. Repealed by Ga. L. 2016, p. 385, § 6/HB 806, effective April 26, 2016.

Editor's notes. — This Code section was based on Code 1981, § 35-2-123, enacted by Ga. L. 2010, p. 137, § 1/HB 1074.

ARTICLE 8

OFFICE OF PUBLIC SAFETY OFFICER SUPPORT

Delayed effective date. — This article, as set out below, becomes effective only when funds are specifically appropriated for the purposes of this Act in an appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure. Funds were not appropriated at the 2018 session of the General Assembly.

35-2-160. (For effective date, see note.) Definitions.

As used in this article, the term:

(1) "Critical incident support services" means interventions designed to provide compassionate or coping support in the event of involvement in, being a witness to, or being otherwise affected by a traumatic event, including, but not limited to, any series of events that render a traumatic effect.

(2) "Peer counselor" shall have the same meaning as provided for in Code Section 24-5-510.

(3) "Public entity" means any agency or department of this state or a political subdivision or municipality of this state or an authority of this state.

(4) "Public safety officer" means a peace officer, correctional officer, emergency health worker, firefighter, highway emergency response operator, jail officer, juvenile correctional officer, probation officer, or emergency services dispatcher.

(5) "Support coordinator" means the coordinator of the Office of Public Safety Officer Support within the Department of Public Safety. (Code 1981, § 35-2-160, enacted by Ga. L. 2018, p. 716, § 2/HB 703.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

35-2-161. (For effective date, see note.) Office of Public Safety Officer Support established.

There is established the Office of Public Safety Officer Support within the Department of Public Safety. (Code 1981, § 35-2-161, enacted by Ga. L. 2018, p. 716, § 2/HB 703.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

35-2-162. (For effective date, see note.) Support coordinator.

The support coordinator shall be appointed by and be under the direction of the commissioner. The support coordinator shall be an individual with experience as a public safety officer and who has received training and exhibited a demonstrated professional ability to provide emotional and moral support to public safety officers. The support coordinator may also otherwise serve as a public safety officer within the department. The support coordinator is charged and empowered to carry out the responsibilities provided for under this article. (Code 1981, § 35-2-162, enacted by Ga. L. 2018, p. 716, § 2/HB 703.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

35-2-163. (For effective date, see note.) Peer counseling and critical incident support services; certification; employment of necessary staff.

(a) The Office of Public Safety Officer Support within the Department of Public Safety may respond to and provide peer counselors and critical incident support services to any requesting public entities that employ public safety officers. The office may respond to and provide

peer counselors and critical incident support services for the benefit of public safety officers experiencing post-traumatic stress disorder or other trauma associated with public safety. The office shall develop a course of training in critical incident stress management and in any other related subject matter for the benefit of public safety officers.

(b) The support coordinator shall certify individuals, who shall be peer counselors, as having received training and demonstrated ability to provide emotional and moral support to public safety officers consistent with the purposes of this article.

(c) The support coordinator, with approval of the commissioner, may employ or retain persons as he or she deems necessary to serve as peer counselors and staff consistent with the purposes of this article. (Code 1981, § 35-2-163, enacted by Ga. L. 2018, p. 716, § 2/HB 703.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

35-2-164. (For effective date, see note.) Provision and designation of office space, personnel, supplies, and materials; policies and procedures.

The commissioner is authorized to provide and designate for the use of the support coordinator such space as shall be necessary to quarter the support coordinator and his or her staff. The support coordinator shall establish policies and procedures for the implementation of this article and is authorized to employ and secure the necessary staff, supplies, and materials to carry out this article, subject to the approval of the commissioner. (Code 1981, § 35-2-164, enacted by Ga. L. 2018, p. 716, § 2/HB 703.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

CHAPTER 3

GEORGIA BUREAU OF INVESTIGATION

Article 1

General Provisions

Sec.

35-3-4. Powers and duties of bureau generally.
35-3-4.1. Subpoena for production of electronic communication service records for computer or electronic device used in furtherance of certain offenses against minors.
35-3-4.3. Subpoena power for investiga-

Sec.
tions of violations involving trafficking of persons for labor or sexual servitude.
35-3-4.4. Issuance of a subpoena; failure to comply.
35-3-5. Director — Creation; appointment and removal; powers and duties.
35-3-14. Bureau to publicly post and share on website certain information from Law Enforcement Notification System of United States Department of Homeland Security.
35-3-15 and 35-3-16 [Repealed].

Article 2

Georgia Crime Information Center

35-3-33. Powers and duties of center generally.
35-3-34. Disclosure and dissemination of criminal records to private persons and businesses; resulting responsibility and liability of issuing center; provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System.
35-3-34.1. Circumstances when exonerated first offender's criminal record may be disclosed.
35-3-35. Disclosure and dissemination of records to public agencies and political subdivisions; responsibility and liability of issuing center.
35-3-36. Duties of state criminal justice agencies as to submission of fingerprints, photographs, and other identifying data to center; responsibility for accuracy.
35-3-37. Review of individual's criminal history record information; definitions; privacy considerations; written application requesting review; inspection.

Article 4

Missing Children Information Center

35-3-83. Missing child reports.

Article 6A

DNA Sampling, Collection, and Analysis

Sec.
35-3-163. Dissemination of information in data bank to law enforcement officials; comparison of profile; request for search; separate statistical data base authorized; fee for search and comparative analysis.

Article 7

State-Wide Alert System for Missing Disabled Adults

35-3-171. Definitions.
35-3-172. Development and implementation of state-wide alert system for disabled adults and medically endangered persons.
35-3-173. Director to be state-wide coordinator for alert system.
35-3-176. Criteria for activating alert system.
35-3-177. Verification that criteria for activation have been met.
35-3-179. Termination of alert system with respect to particular disabled adult or medically endangered person.

Article 8

Alert Systems for Unapprehended Suspects

35-3-190. State-wide alert system for unapprehended murder or rape suspects determined to be serious public threats.

Article 9

Georgia Information Sharing and Analysis Center

35-3-200. Definitions.
35-3-201. Georgia Information Sharing and Analysis Center established; purpose.
35-3-202. Responsibilities of director for center operations.
35-3-203. Cooperative activities of center.
35-3-204. Membership; availability of analysts.

ARTICLE 1

GENERAL PROVISIONS

35-3-4. Powers and duties of bureau generally.

(a) It shall be the duty of the bureau to:

(1) Take, receive, and forward fingerprints, photographs, descriptions, and measurements of persons in cooperation with the bureaus and departments of other states and of the United States;

(2) Exchange information relating to crime and criminals;

(3) Keep permanent files and records of such information procured or received;

(4) Provide for the scientific investigation of articles used in committing crimes or articles, fingerprints, or bloodstains found at the scene of a crime;

(5) Provide for the testing and identification of weapons and projectiles fired therefrom;

(6) Acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(7) Acquire, collect, classify, and preserve immediately any information which would assist in the location of any missing person, including any minor, and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person and the bureau shall acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin;

(8) Exchange such records and information as provided in paragraphs (6) and (7) of this subsection with, and for the official use of, authorized officials of the federal government, the states, cities, counties, and penal and other institutions. With respect to missing minors, such information shall be transmitted immediately to other law enforcement agencies;

(9) Identify and investigate violations of Article 4 of Chapter 7 of Title 16;

(10) Identify and investigate violations of Part 2 of Article 3 of Chapter 12 of Title 16, relating to offenses related to minors;

(11) Identify and investigate violations of Article 8 of Chapter 9 of Title 16;

(12) Identify and investigate violations of Article 5 of Chapter 8 of Title 16;

(13) Identify and investigate violations of Code Section 16-5-46;

(14) Identify and investigate violations of Article 8 of Chapter 5 of Title 16; and

(15)(A) Acquire, collect, analyze, and provide to the board any information which will assist the board in determining a sexual offender's risk assessment classification in accordance with the board's duties as specified in Code Section 42-1-14, including, but not limited to, obtaining:

(i) Incident, investigative, supplemental, and arrest reports from law enforcement agencies;

(ii) Records from clerks of court;

(iii) Records and information maintained by prosecuting attorneys;

(iv) Records maintained by state agencies, provided that any records provided by the State Board of Pardons and Paroles that are classified as confidential state secrets pursuant to Code Section 42-9-53 shall remain confidential and shall not be made available to any other person or entity or be subject to subpoena unless declassified by the State Board of Pardons and Paroles; and

(v) Other documents or information as requested by the board.

(B) As used in this paragraph, the term:

(i) "Board" means the Sexual Offender Registration Review Board.

(ii) "Risk assessment classification" means the level into which a sexual offender is placed based on the board's assessment.

(iii) "Sexual offender" has the same meaning as set forth in Code Section 42-1-12.

(b) In addition to the duties provided in subsection (a) of this Code section, the members of the bureau shall have and are vested with the same authority, powers, and duties as are possessed by the members of the Uniform Division of the Department of Public Safety under this title. (Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1941, p. 277, § 4; Ga. L. 1974, p. 109, § 2; Ga. L. 1977, p. 752, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1984, p. 690, § 2; Ga. L. 1985, p. 149, § 35; Ga. L. 1996, p. 416, § 9; Ga. L. 2007, p. 283, § 3/SB 98; Ga. L. 2008, p. 601, § 2/SB 388; Ga. L. 2010, p. 1162, § 2/SB 371; Ga. L. 2011, p. 217, § 9/HB 200; Ga. L. 2012, p. 351, § 5/HB 1110; Ga. L. 2012, p. 985, § 1/HB 895; Ga. L. 2013, p. 524, § 3-5/HB 78; Ga. L. 2013, p. 1056, § 3/HB 122.)

The 2013 amendments. — The first 2013 amendment, effective July 1, 2013, substituted "Article 8 of Chapter 5 of Title 16" for "Code Section 30-5-8 or 16-5-100" in paragraph (a)(14). The second 2013 amendment, effective July 1, 2013, added the proviso at the end of division (a)(15)(A)(iv).

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

35-3-4.1. Subpoena for production of electronic communication service records for computer or electronic device used in furtherance of certain offenses against minors.

(a)(1) In any investigation of a violation of Code Section 16-12-100, 16-12-100.1, or 16-12-100.2 involving the use of a computer or an electronic device in furtherance of an act related to a minor, or any investigation of a violation of Article 8 of Chapter 9 of Title 16, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of electronic communication service or remote communication service records or other information pertaining to a subscriber or customer of such service, exclusive of contents of communications.

(2) A provider of electronic communication service or remote computing service shall disclose to the bureau the:

(A) Name;

(B) Address;

(C) Local and long distance telephone connection records, or records of session times and durations;

(D) Length of service, including the start date, and types of service utilized;

(E) Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) Means and source of payment for such service, including any credit card or bank account number of a subscriber to or customer of such service.

(3) A provider of electronic communication service or remote computing service shall not provide notification of the subpoena issued pursuant to paragraph (1) of this subsection to the subscriber or customer of such service.

(b) Upon failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or the deputy director for investigations, through the Attorney General or district attorney, may

apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena.

(c) The Attorney General may request that a natural person who refuses to produce relevant matter on the ground that the production of records may incriminate such person be ordered by the court to provide such records. With the exception of a prosecution for perjury, a natural person who complies with the court order to provide such records asserting a privilege against self-incrimination to which he or she is entitled by law shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence, documentary or otherwise.

(d)(1) Information obtained pursuant to a subpoena enforced by this Code section shall not be made public or, except as authorized in paragraph (2) of this subsection, disclosed by the director, assistant director, deputy director for investigations, or the director's employees beyond the extent necessary for the enforcement of this Code section.

(2) The director, assistant director, deputy director for investigations, or the director's employees shall be authorized to provide to any federal, state, or local law enforcement agency any information acquired under this Code section in furtherance of a criminal investigation in violation of Code Section 16-12-100, 16-12-100.1, or 16-12-100.2.

(e) As used in this Code section, the terms "electronic communication service" and "remote communication service" shall have the same meaning as set forth in Code Section 16-9-92. (Code 1981, § 35-3-4.1, enacted by Ga. L. 2007, p. 283, § 4/SB 98; Ga. L. 2008, p. 601, § 3/SB 388; Ga. L. 2018, p. 507, § 1-1/SB 336.)

The 2018 amendment, effective July 1, 2018, added paragraph (a)(3).

JUDICIAL DECISIONS

Cited in Courtney v. State, 340 Ga. App. 496, 797 S.E.2d 496 (2017).

35-3-4.3. Subpoena power for investigations of violations involving trafficking of persons for labor or sexual servitude.

(a) In any investigation of a violation of Code Section 16-5-46 involving trafficking of persons for labor or sexual servitude, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of books, papers, documents, or other tangible things, including records and documents contained within, or generated by, a computer or any other electronic device.

(b) A provider of electronic communication service or remote computing service shall not provide notification of the subpoena issued pursuant to subsection (a) of this Code section to the subscriber or customer of such service.

(c) Upon the failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or the deputy director for investigations, through the Attorney General or district attorney, may apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court. (Code 1981, § 35-3-4.3, enacted by Ga. L. 2011, p. 217, § 10/HB 200; Ga. L. 2018, p. 507, § 1-2/SB 336.)

The 2018 amendment, effective July 1, 2018, added subsection (b); and redesignated former subsection (b) as present subsection (c).

35-3-4.4. Issuance of a subpoena; failure to comply.

(a) In any investigation of a violation of Article 8 of Chapter 5 of Title 16 or other criminal violation involving the abuse, neglect, or exploitation of a disabled adult, elder person, or resident, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of books, papers, documents, or other tangible things, including records and documents contained within, or generated by, a computer or any other electronic device, unless such records are wholly owned by the federal government.

(b) Upon the failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or deputy director for investigations, through the prosecuting attorney, may apply to a superior

court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on the grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court. (Code 1981, § 35-3-4.4, enacted by Ga. L. 2018, p. 602, § 5/HB 635.)

Effective date. — This Code section became effective July 1, 2018.

35-3-5. Director — Creation; appointment and removal; powers and duties.

(a) There is created the position of director.

(b) The director shall be the chief administrative officer and shall be both appointed and removed by the Board of Public Safety with the approval of the Governor.

(c) The director shall coordinate and supervise the work of the Georgia Child Fatality Review Panel created by Code Section 19-15-4 or shall designate a person from within the bureau to serve as the coordinator and supervisor and shall provide such staffing and administrative support to the Georgia Child Fatality Review Panel as may be necessary to enable it to carry out its statutory duties.

(d) The director shall report the death of any child to the chairperson of the review committee, as such term is defined in Code Section 19-15-1, for the county in which such child resided at the time of death, unless the director or his or her designee has knowledge that such death has been reported by the county medical examiner or coroner, pursuant to Code Section 19-15-3, and shall provide such review committee access to any records of the bureau relating to such child.

(e) Except as otherwise provided by this chapter, and subject to the general policy established by the board, the director shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the bureau by this chapter. (Ga. L. 1974, p. 109, § 2; Ga. L. 2005, p. 599, § 2/SB 146; Ga. L. 2014, p. 34, § 2-8/SB 365.)

The 2014 amendment, effective July 1, 2014, added subsections (c) and (d) and redesignated former subsection (c) as present subsection (e).

Editor's notes. — Ga. L. 2014, p. 34, § 2-1/SB 365, not codified by the General Assembly, provides that: "This part shall be known and may be cited as the 'Journey Ann Cowart Act.'"

Ga. L. 2014, p. 34, § 2-9/SB 365, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to provide for transparency relative to investigations involving child

abuse and child fatalities in order to best protect the children of this state. The General Assembly finds that more disclosure of information may be necessary when a child is deceased. The General Assembly intends that agencies and departments of this state share data in order to conduct research for the purpose of preventing child fatalities in this state."

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 25 (2014).

35-3-7. Agreements by director and commissioner for provision of services and material.

Law reviews. — For article, "The Emory Law Volunteer Clinic for Veterans: Serving Those Who Served," see 19 Ga. St. B.J. 26 (Feb. 2014).

35-3-14. Bureau to publicly post and share on website certain information from Law Enforcement Notification System of United States Department of Homeland Security.

To the extent permitted by federal law, the bureau shall post on its public website the information of persons who are aliens and who have been released from federal custody within the boundaries of this state, as such information is presented within the Law Enforcement Notification System of the Enforcement Integrated Database of the United States Department of Homeland Security or the National Law Enforcement Telecommunications System as received by the Georgia Information Sharing and Analysis Center within the bureau or any replacement agency. Within 12 hours of receiving such information, the bureau shall post such information as required by this Code section and electronically send a copy of such information to the Georgia Sheriffs' Association. The bureau shall promulgate rules and regulations for the implementation of this Code section. (Code 1981, § 35-3-14, enacted by Ga. L. 2017, p. 536, § 5-2/HB 452.)

Effective date. — This Code section became effective July 1, 2017.

Editor's notes. — Former Code Section 35-3-14, concerning reimbursement of the director of Division of Forensic Sciences for use of the director's private aircraft, was based on Ga. L. 1974, p. 563, § 1, and was repealed by Ga. L. 1997, p. 1421, § 2, effective May 1, 1997.

Ga. L. 2017, p. 536, § 1-1/HB 452, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Protect Georgia Act.'"

Law reviews. — For article on the 2017 enactment of this Code section, see 34 Ga. St. U.L. Rev. 17 (2017).

35-3-15 and 35-3-16.

Repealed by Ga. L. 1997, p. 1421, § 2, effective May 1, 1997.

Editor's notes. — These Code sections were based on Ga. L. 1990, p. 1735, § 1; Ga. 1994, p. 875, § 1.

ARTICLE 2

GEORGIA CRIME INFORMATION CENTER

Law reviews. — For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

35-3-33. Powers and duties of center generally.

(a) The center shall:

(1) Obtain and file fingerprints, descriptions, photographs, and any other pertinent identifying data on persons who:

(A) Have been or are hereafter arrested or taken into custody in this state:

(i) For an offense which is a felony;

(ii) For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sexual offenses where children are victims, or worthless checks;

(iii) For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under division (ii) of this subparagraph;

(iv) As a fugitive from justice; or

(v) For any other offense designated by the Attorney General;

(B) Are or become career criminals, well-known offenders, or habitual offenders;

(C) Are currently or become confined to any prison, penitentiary, or other penal institution;

(D) Are unidentified human corpses found in this state;

(E) Are children who are charged with an offense that if committed by an adult would be a felony or are children whose cases are transferred from a juvenile court to another court for prosecution; or

(F) Are individuals for whom fingerprint based criminal history checks are authorized by this state's or federal law for the purpose of determining suitability or fitness for employment, placement, registration, a permit, or a license for an agency or qualified entity

which is participating in the federal program that allows an ongoing and continuing review of such individual's criminal history; provided, however, that such fingerprints shall be retained and maintained securely and separately from records relating to the identification of criminals, and provided, further, that the center shall not file or retain fingerprints submitted for the purpose of obtaining or renewing a weapons carry license, as such term is defined in Code Section 16-11-125.1;

(2) Compare all fingerprint and other identifying data received with those already on file and, whether or not a criminal record is found for a person, at once inform the requesting agency or arresting officer of such facts as may be disseminated consistent with applicable security and privacy laws and regulations. A log shall be maintained of all disseminations made of each individual criminal history including at least the date and recipient of such information;

(3) Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes reported to and otherwise processed by any and all law enforcement agencies within the state, as defined and provided for in this article;

(4) Periodically conduct audits of crime reporting practices of criminal justice agencies to ensure compliance with the standards of national and state uniform crime reporting systems and to ensure reporting of criminal arrests, dispositions, and custodial information;

(5) Develop, operate, and maintain an information system which will support the collection, storage, retrieval, and dissemination of all crime and offender data described in this article consistent with those principles of scope, security, and responsiveness prescribed by this article;

(6) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards, and related training assistance necessary for the uniform operation of the center;

(7) Offer assistance and, when practicable, instruction to all criminal justice agencies in establishing efficient local records systems;

(8) Compile statistics on the nature and extent of crime in the state and compile other data related to planning for and operating criminal justice agencies, provided that such statistics do not identify persons, and make available all such statistical information obtained to the Governor, the General Assembly, and any other governmental agencies whose primary responsibilities include the planning, development, or execution of crime reduction programs. Access to such information by the latter governmental agencies will be on an individual, written request basis wherein must be demonstrated a

need to know, the intent of any analyses, dissemination of such analyses, and any security provisions deemed necessary by the center;

(9) Periodically publish in print or electronically statistics, no less frequently than annually, that do not identify persons and report such information to the Governor, the General Assembly, state and local criminal justice agencies, and the general public. Such information shall accurately reflect the level and nature of crime in the state and the operations in general of the different types of agencies within the criminal justice system;

(10) Make available, upon request, to all local and state criminal justice agencies, all federal criminal justice agencies, and criminal justice agencies in other states any information in the files of the center which will aid these agencies in the performance of their official duties, including but not limited to final disposition of offenses; sentencing information and conditions; orders modifying an earlier disposition; orders relating to probation, including modification, tolling, completion of active probation supervision, termination, revocation, or completion of orders entered pursuant to Article 3 of Chapter 8 of Title 42; and orders relating to parole, including modification, tolling, termination, and revocation. For this purpose the center shall operate on a 24 hour basis, seven days a week. Such information when authorized by the council may also be made available to any other agency of the state or political subdivision of the state and to any other federal agency upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders;

(11) Cooperate with other agencies of the state, the crime information agencies of other states, and the Uniform Crime Reports and National Crime Information Center systems of the Federal Bureau of Investigation in developing and conducting an interstate, national, and international system of criminal identification, records, and statistics;

(12) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for in this article and to cooperate in the correction of the central center records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual;

(13) Institute the necessary measures in the design, implementation, and continued operation of the criminal justice information

system to ensure the privacy and security of the system. This will include establishing complete control over use and access of the system and restricting its integral resources and facilities to those either possessed or procured and controlled by criminal justice agencies as defined in this article. Such security measures must meet standards to be set by the council as well as those set by the nationally operated systems for interstate sharing of information;

(14) Provide availability, by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to criminal justice agencies;

(15) Receive and process fingerprints from the Supreme Court of Georgia Office of Bar Admissions for the purpose of determining whether or not an applicant for admission to the State Bar of Georgia has a criminal record. The processing shall include submission of fingerprints to the Georgia Bureau of Investigation and the Federal Bureau of Investigation for comparison to each of their respective files and data bases;

(16) Provide The Council of Superior Court Clerks of Georgia the data set forth in Code Section 21-2-231, without charge and in the electronic format requested;

(17) Notify the appropriate clerk of court that a defendant has completed his or her first offender sentence or was exonerated of guilt and discharged pursuant to subsection (g) of Code Section 42-8-60 within five days of such completion or exoneration;

(18) Submit fingerprints obtained pursuant to subparagraph (F) of paragraph (1) of this subsection to the Federal Bureau of Investigation for retention under the rules established by the United States Department of Justice for processing and identification of records. Such fingerprints shall be searched by future submissions to the Federal Bureau of Investigation and the center shall send appropriate responses to submitting and subscribing entities;

(19) Remove fingerprints obtained pursuant to subparagraph (F) of paragraph (1) of this subsection within ten days of being notified that an individual whose fingerprints were retained under such program is no longer employed by, volunteering for, placed by, or registered, licensed, or permitted by the participating agency or qualified entity. It shall also remove such fingerprints when such agency or qualified entity is no longer participating in such program. The center shall also notify the Federal Bureau of Investigation of such information; and

(20) Be authorized to charge an annual subscriber fee not to exceed $500.00 to any entity which is not a state agency that desires to

participate in the program described in subparagraph (F) of paragraph (1) of this subsection.

(b) Criminal justice agencies shall furnish upon written request and without charge to any local fire department in this state a copy, processed under purpose code "E", of the criminal history record information of an applicant for employment.

(c) The provisions of this article notwithstanding, information and records of children shall only be inspected and disclosed as provided in Code Sections 15-11-702 and 15-11-708. Such records and information shall be sealed or destroyed according to the procedures outlined in Code Sections 15-11-701 and 15-11-709. (Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 617, § 5; Ga. L. 1980, p. 394, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 952, §§ 2, 4; Ga. L. 1984, p. 22, § 35; Ga. L. 1986, p. 513, § 1; Ga. L. 1992, p. 6, § 35; Ga. L. 1998, p. 842, § 7; Ga. L. 2000, p. 20, § 21; Ga. L. 2000, p. 1549, § 1; Ga. L. 2003, p. 334, § 2; Ga. L. 2007, p. 43, § 1/SB 62; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2013, p. 294, § 4-44/HB 242; Ga. L. 2014, p. 451, § 11/HB 776; Ga. L. 2016, p. 443, § 6B-2/SB 367; Ga. L. 2016, p. 864, § 35/HB 737; Ga. L. 2017, p. 622, § 2/SB 95; Ga. L. 2018, p. 507, §§ 1A-1, 1A-2/SB 336.)

The 2013 amendment, effective January 1, 2014, in subsection (c), substituted "Code Sections 15-11-702 and 15-11-708" for "Code Sections 15-11-82 and 15-11-83" in the first sentence, inserted "sealed or", and substituted "Code Sections 15-11-701 and 15-11-709" for "Code Sections 15-11-79.2 and 15-11-81" in the last sentence. See Editor's notes for applicability.

The 2014 amendment, effective July 1, 2014, deleted "and" at the end of paragraph (a)(14); substituted "; and" for a period at the end of paragraph (a)(15); and added paragraph (a)(16).

The 2016 amendments. — The first 2016 amendment, effective July 1, 2016, at the end of the first sentence in paragraph (a)(10), added ", including but not limited to final disposition of offenses; sentencing information and conditions; orders modifying an earlier disposition; orders relating to probation, including modification, tolling, completion of active probation supervision, termination, revocation, or completion of orders entered pursuant to Article 3 of Chapter 8 of Title 42; and orders relating to parole, including modification, tolling, termination, and revocation"; deleted "and" at the end of paragraph (a)(15); substituted "; and" for the period at the end of paragraph (a)(16); and added paragraph (a)(17). The second 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, substituted "sexual offenses" for "sex offenses" near the end of division (a)(1)(A)(ii).

The 2017 amendment, effective July 1, 2017, substituted "Code Section 21-2-231" for "Code Sections 15-12-40.1 and 21-2-231" in paragraph (a)(16).

The 2018 amendment, effective July 1, 2018, deleted "or" at the end of subparagraph (a)(1)(D), added "or" at the end of subparagraph (a)(1)(E), and added subparagraph (a)(1)(F); deleted "and" at the end of paragraph (a)(16); substituted a semicolon for a period at the end of paragraph (a)(17); and added paragraphs (a)(18) through (a)(20).

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior

adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

JUDICIAL DECISIONS

Cited in Gay v. Owens, 292 Ga. 480, 738 S.E.2d 614 (2013).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

DISCLOSURE

Disclosure

Updating of crimes and offenses for which Georgia Crime Information Center is authorized to collect and file fingerprints. — Pursuant to authority granted to the Attorney General in O.C.G.A. § 35-3-33(a)(1)(A)(v), any misdemeanor offenses arising under O.C.G.A. §§ 16-11-130.2, 16-11-90(b), 16-8-14.1(a), 16-8-22, and 33-24-53, are designated as ones for which those charged are to be fingerprinted. 2014 Op. Att'y Gen. No. 2014-2.

Pursuant to authority granted to the Attorney General in O.C.G.A. § 35-3-33(a)(1)(A)(v), any misdemeanor offenses arising under O.C.G.A. § 7-1-696 and O.C.G.A. § 7-1-709, are not at this time designated as ones for which those charged are to be fingerprinted. 2014 Op. Att'y Gen. No. 2014-2.

35-3-34. Disclosure and dissemination of criminal records to private persons and businesses; resulting responsibility and liability of issuing center; provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to private persons and businesses under the following conditions:

(A) Private individuals and businesses requesting criminal history records shall, at the time of the request, provide the fingerprints of the person whose records are requested or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth;

(B)(i) The center shall not provide records of arrests, charges, or sentences when an individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 and has been exonerated and discharged without court adjudication of guilt as a matter of law

or pursuant to a court order, including records relating to such defendant's bench warrants, failure to appear, and probation for such offense, except as specifically authorized by Code Section 42-8-63.1. The center shall not provide records of arrests, charges, or sentences when an individual has been sentenced as provided in Code Section 15-1-20, including records relating to such defendant's bench warrants, failure to appear, and probation for such offense, except as specifically authorized by Code Section 42-8-63.1.

(ii) During the period of time after a defendant, who has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, has completed active probation supervision through the remainder of such sentence, the center shall not provide records of arrests, charges, or sentences except as specifically authorized by Code Section 42-8-63.1.

(iii) The center may provide records of arrests, charges, or sentences when an individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, as specifically authorized by Code Section 42-8-63.1, while a defendant is under active probation supervision for such offense, or as provided in a court order;

(C) When the identifying information provided is sufficient to identify persons whose records are requested electronically, the center may disseminate electronically criminal history records of in-state felony convictions, pleas, and sentences without:

(i) Fingerprint comparison; or

(ii) Consent of the person whose records are requested; and

(D) The center shall not provide records of arrests, charges, or dispositions when access has been restricted pursuant to Code Section 15-1-20, 35-3-37, or 42-8-62.1; or

(2) Make criminal history records of the defendant or witnesses in a criminal action available to counsel for the defendant upon receipt of a written request from the defendant's counsel under the following conditions:

(A) Such request shall contain the style of the case and the name and identifying information for each person whose records are requested. Such request shall be submitted to the center;

(B) In cases where the court has determined the defendant to be indigent, any fees authorized by law shall be waived; and

(C) Disclosure of criminal history information to the defendant's counsel as provided in this paragraph shall be solely in such counsel's capacity as an officer of the court. Any use of such information in a manner not authorized by law or the court in which such action is pending where the records were disclosed shall constitute a violation of Code Section 35-3-38; and

(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event that an employment decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with the dissemination pursuant to this Code section and shall be immune from suit based upon any such claims.

(d) Local criminal justice agencies may disseminate criminal history records, without fingerprint comparison or prior contact with the center, to private individuals and businesses under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as needed to reimburse such agencies for their direct and indirect costs related to the providing of such disseminations.

(d.1) Reserved.

(d.2) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:

(1) Fingerprint comparison;

(2) Prior contact with the center; or

(3) Consent of the person whose records are requested.

Such information may be disseminated to private individuals and businesses under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies

may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.

(d.3) No fee charged pursuant to this Code section may exceed $20.00 per person whose criminal history record is requested or be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

(d.4) The center shall place a high priority on inquiries from any nuclear power facility requesting a criminal history and shall respond to such requests as expeditiously as possible, but in no event shall a response be made more than two business days following receipt of the request.

(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal history records, wanted person records, and involuntary hospitalization records information to the Federal Bureau of Investigation in conjunction with the National Instant Criminal Background Check System in accordance with the federal Brady Handgun Violence Prevention Act, 18 U.S.C. Section 921, et seq.

(2) The records of the Georgia Crime Information Center shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the Georgia Crime Information Center shall be provided such information and no other mental health information from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges Training Council and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. Further, notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the time of the crime, has been involuntarily hospitalized, or both from the records of the clerks of the superior courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. After five years have elapsed from the date that a person's involuntary hospitalization information has been received by the Georgia Crime Information Center, the center shall purge its records of such information as soon as practicable and in any event purge such records within 30 days after the expiration of such five-year period.

(3)(A) The records of the center shall include information as to whether a person has been involuntarily hospitalized. In order to carry out the provisions of Code Section 16-11-129, the center shall be provided such information and no other mental health information from the records of the probate and superior courts ordering persons to be involuntarily hospitalized. With respect to probate court records, such information shall be provided in a manner agreed upon by the Probate Judges Training Council and the bureau. With respect to superior court records, such information shall be provided in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the bureau. Such records shall be provided in a manner so as to preserve the confidentiality of patients' rights in all other respects.

(B) In order to carry out the provisions of Code Section 16-11-129, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or has been found not guilty by reason of insanity at the time of the crime. The clerk of court shall report such information to the center immediately but in no case later than ten days after such adjudication of mental incompetence or finding of not guilty by reason of insanity.

(f) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section. The council shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided in accordance with this Code section. (Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 1401, § 2; Ga. L. 1977, p. 1243, § 1; Ga. L. 1978, p. 1981, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1988, p. 203, § 1; Ga. L. 1989, p. 1080, § 2; Ga. L. 1994, p. 1895, § 12; Ga. L. 1995, p. 139, § 3; Ga. L. 1995, p. 633, §§ 1, 2; Ga. L. 1996, p. 6, § 35; Ga. L. 2000, p. 1206, § 1; Ga. L. 2003, p. 840, § 1; Ga. L. 2005, p. 613, § 2/SB 175; Ga. L. 2006, p. 72, § 35/SB 465; Ga. L. 2006, p. 812, § 4/SB 532; Ga. L. 2012, p. 899, § 6-1/HB 1176; Ga. L. 2014, p. 599, § 1-13/HB 60; Ga. L. 2016, p. 443, § 6B-3/SB 367.)

The 2014 amendment, effective July 1, 2014, added paragraph (e)(3).

The 2016 amendment, effective July 1, 2016, substituted the present provisions of subparagraph (a)(1)(B) for the former provisions, which read: "The center may not provide records of arrests, charges, and sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law;" and, in subparagraph (a)(1)(D), substituted "Code Section 15-1-20, 35-3-37, or 42-8-62.1" for "Code Section 35-3-37".

Editor's notes. — Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 47 (2014). For article on the 2016 amendment of this

Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

JUDICIAL DECISIONS

Cited in Nasir v. Gwinnett County State Court, 341 Ga. App. 63, 798 S.E.2d 695 (2017).

35-3-34.1. Circumstances when exonerated first offender's criminal record may be disclosed.

When a defendant has been exonerated and discharged without court adjudication of guilt pursuant to Article 3 of Chapter 8 of Title 42, the center is authorized to provide the first offender's record of arrests, charges, or sentences to the employers and entities and under the conditions set forth in Code Section 42-8-63.1. (Code 1981, § 35-3-34.1, enacted by Ga. L. 2003, p. 840, § 3; Ga. L. 2006, p. 72, § 35/SB 465; Ga. L. 2006, p. 164, § 1/HB 1335; Ga. L. 2009, p. 453, § 3-10/HB 228; Ga. L. 2011, p. 227, § 23/SB 178; Ga. L. 2013, p. 524, § 3-6/HB 78; Ga. L. 2016, p. 443, § 6B-4/SB 367.)

The 2013 amendment, effective July 1, 2013, in paragraph (a)(2), substituted "long-term care facility as defined in Code Section 31-8-51" for "nursing home, assisted living community, personal care home," near the middle, and substituted "Article 8 of Chapter 5 of Title 16" for "Code Section 30-5-8" near the end.

The 2016 amendment, effective July 1, 2016, substituted the present provisions of this Code section for the former provisions, which read: "(a) Where an offender has been exonerated and discharged without court adjudication of guilt pursuant to Article 3 of Chapter 8 of Title 42, the center is authorized to provide the first offender's record of arrests, charges, or sentences if the offender was exonerated and discharged without a court adjudication of guilt on or after July 1, 2004, and either.

"(1) The request for information is an inquiry about a person who has applied for employment with a public school, private school, child welfare agency, or a person or entity that provides day care for minor children or after school care for minor children and the person who is the subject of the inquiry to the center was prosecuted for the offense of child molestation, sexual battery, enticing a child for indecent purposes, sexual exploitation of a child, pimping, pandering, or incest;

"(2) The request for information is an inquiry about a person who has applied for employment with a long-term care facility as defined in Code Section 31-8-51 or a person or entity that offers day care for elderly persons and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, pandering, or a violation of Article 8 of Chapter 5 of Title 16; or

"(3) The request for information is an inquiry about a person who has applied for employment with a facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to persons who are mentally ill as defined in Code Section 37-1-1 or developmentally disabled as defined in Code Section 37-1-1, and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, or pandering.

"(b) First offender records including records of arrests, charges, or sentences may be released to any law enforcement unit and the Georgia Peace Officer Standards and Training Council where the request for information is an inquiry about a person who has applied for em-

ployment in a certified position or a person who is an applicant, candidate, or peace officer as defined in Code Section 35-8-2."

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

35-3-35. Disclosure and dissemination of records to public agencies and political subdivisions; responsibility and liability of issuing center.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies or their designated representatives, under the following conditions:

(A) Public agencies or political subdivisions shall, at the time of the request, provide the fingerprints of the person whose records are requested in such manner prescribed by the center, which may include the electronic imaging of a person's fingerprints, or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth; provided, however, that the provisions of this paragraph shall supersede any other provision relating to the submission of fingerprints to the center;

(B)(i) The center shall not provide records of arrests, charges, or sentences when an individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 and has been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, including records relating to such defendant's bench warrants, failure to appear, and probation for such offense, except as specifically authorized by Code Section 42-8-63.1. The center shall not provide records of arrests, charges, or sentences when an individual has been sentenced as provided in Code Section 15-1-20, including records relating to such defendant's bench warrants, failure to appear, and probation for such offense, except as specifically authorized by Code Section 42-8-63.1.

(ii) During the period of time after a defendant, who has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, has completed active probation supervision through the remainder of such sentence, the center shall not provide records of arrests,

charges, or sentences except as specifically authorized by Code Section 42-8-63.1.

(iii) The center may provide records of arrests, charges, or sentences when an individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, as specifically authorized by Code Section 42-8-63.1, while a defendant is under active probation supervision for such offense, or as provided in a court order;

(C) When the identifying information provided is sufficient to identify persons whose records are requested electronically, the center may disseminate electronically criminal history records of in-state felony convictions, pleas, and sentences without:

(i) Fingerprint comparison; or

(ii) Consent of the person whose records are requested; and

(D) The center shall not provide records of arrests, charges, or dispositions when access has been restricted pursuant to Code Section 15-1-20, 35-3-37, or 42-8-62.1;

(1.1) Make criminal history records maintained by the center available to any county board of registrars or county board of registration and election. The making of an application for voter registration shall be deemed to be consent of the person making the application to release such records to the county board of registrars or county board of registration and election. Such records shall be requested for the sole purpose of verification of information provided on voter registration cards by registration applicants;

(1.2) Make criminal history records maintained by the center and national criminal history records maintained by the Federal Bureau of Investigation, obtained by the center, available to the governing authority of any county or municipality, for any applicant or licensee in a specified occupation for which such local governing authority has adopted an ordinance or resolution requiring such applicants or licensees in a particular occupation or profession regulated by the governing authority to be fingerprinted as a condition of submitting an application or obtaining or renewing a license. The center shall establish a uniform method of obtaining criminal history records required under this paragraph. Such uniform method shall require the submission to the center of two complete sets of fingerprints and the records search fee. Upon receipt thereof, the center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search

of its own records and records to which it has access. After receiving the fingerprints and fee, the center shall notify the requesting local government authority in writing of any derogatory finding, including, but not limited to, any criminal record data regarding the fingerprint records check or if there is no such finding. Nothing in this paragraph shall prevent the local governing authority from obtaining national criminal history records directly from the Federal Bureau of Investigation, if an ordinance or resolution requiring the fingerprints of an applicant or licensee of a particular occupation or profession regulated by the local governing authority has been adopted by such governing authority of the county or municipality; and

(2) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event an employment or licensing decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the public agency, political subdivision, authority or instrumentality, or licensing or regulatory agency making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information disseminated nor have any liability for defamation, invasion of privacy, negligence, nor any other claim in connection with any dissemination pursuant to this Code section and shall be immune from suit based upon such claims.

(d) Local criminal justice agencies may disseminate criminal history records to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as necessary to reimburse such agencies for their direct and indirect costs associated with providing such disseminations.

(d.1) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:

(1) Fingerprint comparison;

(2) Prior contact with the center; or

(3) Consent of the person whose records are requested.

Such information may be disseminated to entities to which such records may be made available under subsection (d) of this Code section under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.

(d.2) No fee charged pursuant to this Code section may exceed $20.00 per person whose criminal history record is requested or be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

(e) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section. (Ga. L. 1978, p. 1981, § 1; Ga. L. 1988, p. 203, § 2; Ga. L. 1990, p. 1831, § 1; Ga. L. 1992, p. 1009, § 1; Ga. L. 1995, p. 633, §§ 3, 4; Ga. L. 2000, p. 1206, § 2; Ga. L. 2003, p. 840, § 2; Ga. L. 2007, p. 43, §§ 2, 3/SB 62; Ga. L. 2016, p. 443, § 6B-5/SB 367.)

The 2016 amendment, effective July 1, 2016, substituted the present provisions of subparagraph (a)(1)(B) for the former provisions, which read: "The center may not provide records of arrests, charges, or sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law; and"; added "and" at the end of subdivision (a)(1)(C)(ii); and added subparagraph (a)(1)(D).

JUDICIAL DECISIONS

Cited in Nasir v. Gwinnett County State Court, 341 Ga. App. 63, 798 S.E.2d 695 (2017).

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

35-3-36. Duties of state criminal justice agencies as to submission of fingerprints, photographs, and other identifying data to center; responsibility for accuracy.

(a) All criminal justice agencies within the state shall submit to the center fingerprints, descriptions, photographs when specifically requested, and other identifying data on persons who have been lawfully arrested or taken into custody in the state for all felonies and for the misdemeanors and violations designated in subparagraph (a)(1)(A) of Code Section 35-3-33 and for persons in the categories enumerated in

subparagraphs (a)(1)(B), (a)(1)(C), and (a)(1)(D) of Code Section 35-3-33.

(b) It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, clerks of court, community supervision officers, county or Department of Juvenile Justice juvenile probation officers, probation officers and private probation officers serving pursuant to Article 6 of Chapter 8 of Title 42, wardens or other persons in charge of penal and correctional institutions in this state, the Georgia Superior Court Clerks' Cooperative Authority, and the State Board of Pardons and Paroles to furnish the center with any other data deemed necessary by the center to carry out its responsibilities under this article.

(c) All persons in charge of law enforcement agencies shall obtain or cause to be obtained fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation, full-face and profile photographs if photo equipment is available, and other available identifying data of each person arrested or taken into custody for an offense of a type designated in paragraph (1) of subsection (a) of Code Section 35-3-33, of all persons arrested or taken into custody as fugitives from justice, and of all unidentified human corpses in their jurisdictions; but photographs need not be taken if it is known that photographs of the type listed taken within the previous year are on file. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall have any fingerprint record taken in connection therewith returned or deleted, as applicable, if the fingerprint record was taken in error or upon court order, and such dispositions shall be reported to the center.

(d) Fingerprints and other identifying data required to be taken under subsection (c) of this Code section shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned; but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the center so requests.

(e) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data for all felonies and for the misdemeanors and violations designated in subparagraph (a)(1)(A) of Code Section 35-3-33 immediately upon determination of the fact that the warrant cannot be served

for the reasons stated. If any such warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. In addition, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by the center confirm to the center all such arrest warrants of this type which continue to be outstanding.

(f) All persons in charge of state penal and correctional institutions shall obtain fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation or as otherwise directed by the center and full-face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the center together with any other identifying data requested within ten days after the arrival at the institution of the person committed. At the time of release of any person committed to a correctional institution, the institution shall again obtain fingerprints as provided for in this subsection and forward them to the center within ten days along with any other related information requested by the center. Immediately upon release, the institution shall notify the center of the release of the person.

(g) All persons in charge of law enforcement agencies, clerks of court or the Georgia Superior Court Clerks' Cooperative Authority as applicable, municipal judges when such judges do not have a clerk, magistrates, persons in charge of community supervision, juvenile probation, or Article 6 of Chapter 8 of Title 42 probation offices, and the State Board of Pardons and Paroles shall transmit to the center the information described in Code Section 35-3-33 within 30 days of the creation or receipt of such information, except as provided in subsection (d) of this Code section, on the basis of the forms and instructions to be provided by the center.

(h) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with guidelines established by the center. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the center copies of identifying data, as required in accordance with center guidelines, in those files as will aid in establishing the nucleus of the state criminal identification file.

(i) All criminal justice agencies within the state shall submit to the center, periodically at a time and in such form as prescribed by the center, information regarding only the cases within its jurisdiction and in which it is or has been actively engaged. Such report shall be known as the "uniform crime report" and shall contain crimes reported and otherwise processed during the period preceding the period of report,

including the number and nature of offenses committed, the disposition of such offenses, and such other information as the center shall specify, relating to the method, frequency, cause, and prevention of crime. The incident/complaint report forms used by criminal justice agencies shall, when applicable, include the identification of any victim who is a student and the name of the school attended by any such student.

(j) Any governmental agency which is not included within the description of those departments and agencies required to submit the uniform crime report provided for in subsection (i) of this Code section but which desires to submit a report shall be furnished with the proper forms by the center. When a report is received by the center from a governmental agency not required to make a report, the information contained therein shall be included within the periodic compilation provided for in paragraph (9) of subsection (a) of Code Section 35-3-33.

(k) Upon the request of the center, local law enforcement agencies shall periodically provide for audit samples of incident reports for the preceding reporting period so that the center may help ensure agency compliance with national and state uniform crime reporting requirements.

(l) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as practicable after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the investigating department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(m) If at any time after making a report as required by subsection (l) of this Code section it is determined by the reporting department or agency that a person is no longer wanted due to his apprehension or any other factor or when a vehicle or property stolen is recovered, the law enforcement agency shall immediately notify the center of such status. Furthermore, if the agency making the apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery.

(n) Neither the center nor its employees shall be responsible for the accuracy of information contained in records representing wanted persons, missing persons, and stolen serial numbered property established in computerized files on the Georgia Criminal Justice Informa-

tion System (CJIS) network or in computerized files maintained by the Federal Bureau of Investigation National Crime Information Center (NCIC). Criminal justice agencies establishing such records bear all responsibilities for entry, update, and removal as dictated by actions of criminal justice employees and officials. (Ga. L. 1973, p. 1301, § 4; Ga. L. 1976, p. 617, § 6; Ga. L. 1980, p. 396, § 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1983, p. 884, § 4-1; Ga. L. 1984, p. 22, § 35; Ga. L. 1985, p. 149, § 35; Ga. L. 1992, p. 1022, § 1; Ga. L. 2001, p. 1024, § 1; Ga. L. 2002, p. 415, § 35; Ga. L. 2003, p. 336, § 1; Ga. L. 2003, p. 840, § 3A; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2015, p. 422, § 5-54/HB 310; Ga. L. 2016, p. 443, § 6B-6/SB 367; Ga. L. 2016, p. 864, § 35/HB 737.)

The 2015 amendment, effective July 1, 2015, substituted "community supervision officers, county or department of Juvenile Justice juvenile probation officers, probation officers serving pursuant to Article 6 of Chapter 8 of Title 42" for "parole and probation officers" near the middle of subsection (b); and substituted "community supervision, juvenile probation, or Article 6 of Chapter 8 of Title 42 probation" for "state and county probation and parole" in the middle of subsection (g). See Editor's notes for applicability.

The 2016 amendments. — The first 2016 amendment, effective July 1, 2016, in subsection (b), substituted "clerks of court, community supervision officers, county or Department of Juvenile Justice juvenile probation officers, probation officers and private probation officers serving pursuant to Article 6 of Chapter 8 of Title 42, wardens or other persons in charge of penal and correctional institutions in this state, the Georgia Superior Court Clerks' Cooperative Authority, and the State Board of Pardons and Paroles" for "community supervision officers, county or department of Juvenile Justice juvenile probation officers, probation officers serving pursuant to Article 6 of Chapter 8 of Title 42, wardens, or other persons in charge of penal and correctional institutions in this state"; near the end of subsection (c), substituted "or deleted, as applicable, if the fingerprint record was taken in error or upon court order, and such dispositions shall" for "if required by statute or upon court order and any such dispositions must also"; and rewrote subsection (g). The second 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised capitalization in subsection (b).

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015). For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

35-3-37. Review of individual's criminal history record information; definitions; privacy considerations; written application requesting review; inspection.

(a) As used in this Code section, the term:

(1) "Drug court treatment program" means a treatment program operated by a drug court division in accordance with the provisions of Code Section 15-1-15.

(2) "Entity" means the arresting law enforcement agency, including county and municipal jails and detention centers.

(3) "Mental health treatment program" means a treatment program operated by a mental health court division in accordance with the provisions of Code Section 15-1-16.

(4) "Nonserious traffic offense" means any offense in violation of Title 40 which is not prohibited by Article 15 of Chapter 6 of Title 40 and any similar such offense under the laws of a state which would not be considered a serious traffic offense under the laws of this state if committed in this state.

(5) "Prosecuting attorney" means the Attorney General, a district attorney, or the solicitor-general who had jurisdiction where the criminal history record information is sought to be modified, corrected, supplemented, amended, or restricted. If the offense was a violation of a criminal law of this state which, by general law, may be tried by a municipal, magistrate, probate, or other court that is not a court of record, the term "prosecuting attorney" shall include the prosecuting officer of such court or, in the absence of such prosecuting attorney, the district attorney of the judicial circuit in which such court is located.

(6) "Restrict," "restricted," or "restriction" means that the criminal history record information of an individual relating to a particular charge shall be available only to judicial officials and criminal justice agencies for law enforcement or criminal investigative purposes or to criminal justice agencies for purposes of employment in accordance with procedures established by the center and shall not be disclosed or otherwise made available to any private persons or businesses pursuant to Code Section 35-3-34 or to governmental agencies or licensing and regulating agencies pursuant to Code Section 35-3-35.

(7) "Serious violent felony" shall have the same meaning as set forth in Code Section 17-10-6.1.

(8) "State" includes any state, the United States or any district, commonwealth, territory, or insular possession of the United States, and the Trust Territory of the Pacific Islands.

(9) "Veterans treatment program" means a treatment program operated by a veterans court division in accordance with the provisions of Code Section 15-1-17.

(10) "Youthful offender" means any offender who was less than 21 years of age at the time of his or her conviction.

(b) Nothing in this article shall be construed so as to authorize any person, agency, corporation, or other legal entity of this state to invade the privacy of any citizen as defined by the General Assembly or as defined by the courts other than to the extent provided in this article.

(c) The center shall make an individual's criminal history record information available for review by such individual or his or her designee upon written application to the center.

(d) If an individual believes his or her criminal history record information to be inaccurate, incomplete, or misleading, he or she may request a criminal history record information inspection at the center. The center at which criminal history record information is sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures or restrictions, including fingerprinting, as are reasonably necessary to assure the security of the criminal history record information, to verify the identities of those who seek to inspect such information, and to maintain an orderly and efficient mechanism for inspection of criminal history record information. The fee for inspection of criminal history record information shall not exceed $15.00, which shall not include the cost of the fingerprinting.

(e) If the criminal history record information is believed to be inaccurate, incomplete, or misleading, the individual may request that the entity having custody or control of the challenged information modify, correct, supplement, or amend the information and notify the center of such changes within 60 days of such request. In the case of county and municipal jails and detention centers, such notice to the center shall not be required. If the entity declines to act within 60 days of such request or if the individual believes the entity's decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the right to appeal to the court with original jurisdiction of the criminal charges in the county where the entity is located.

(f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order from the court with original jurisdiction of the criminal charges that the subject information be modified, corrected, supplemented, or amended by the entity with custody of such information. Notice of the appeal shall be provided to the entity and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient service on the entity having custody or control of the disputed criminal history record information. The court shall conduct a de novo review and, if requested by a party, the proceedings shall be recorded.

(g)(1) Should the court find by a preponderance of the evidence that the criminal history record information in question is inaccurate, incomplete, or misleading, the court shall order such information to be appropriately modified, corrected, supplemented, or amended as the court deems appropriate. Any entity with custody, possession, or control of any such criminal history record information shall cause

each and every copy thereof in its custody, possession, or control to be altered in accordance with the court's order within 60 days of the entry of the order.

(2) To the extent that it is known by the requesting individual that an entity has previously disseminated inaccurate, incomplete, or misleading criminal history record information, he or she shall, by written request, provide to the entity the name of the individual, agency, or company to which such information was disseminated. Within 60 days of the written request, the entity shall disseminate the modification, correction, supplement, or amendment to the individual's criminal history record information to such individual, agency, or company to which the information in question has been previously communicated, as well as to the individual whose information has been ordered so altered.

(h) Access to an individual's criminal history record information, including any fingerprints or photographs of the individual taken in conjunction with the arrest, shall be restricted by the center for the following types of dispositions:

(1) Prior to indictment, accusation, or other charging instrument:

(A) The case was never referred for further prosecution to the proper prosecuting attorney by the arresting law enforcement agency and:

(i) The offense against such individual is closed by the arresting law enforcement agency. It shall be the duty of the head of the arresting law enforcement agency to notify the center whenever a record is to be restricted pursuant to this division within 30 days of such decision. A copy of the notice shall be sent to the accused and the accused's attorney, if any, by mailing the same by first-class mail within seven days of notifying the center; or

(ii) The center does not receive notice from the arresting law enforcement agency that the offense has been referred to the prosecuting attorney or transferred to another law enforcement or prosecutorial agency of this state, any other state or a foreign nation, or any political subdivision thereof for prosecution and the following period of time has elapsed from the date of the arrest of such individual:

(I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated nature, two years;

(II) If the offense is a felony, other than a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, four years; or

(III) If the offense is a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

If the center receives notice of the filing of an indictment subsequent to the restriction of a record pursuant to this division, the center shall make such record available in accordance with Code Section 35-3-34 or 35-3-35. If the center does not receive notice of a charging instrument within 30 days of the applicable time periods set forth in this division, such record shall be restricted by the center for noncriminal justice purposes and shall be considered sealed.

(B) The case was referred to the prosecuting attorney but was later dismissed;

(C) The grand jury returned two no bills; or

(D) The grand jury returned one no bill and the applicable time period set forth in division (ii) of subparagraph (A) of this paragraph has expired; and

(2) After indictment or accusation:

(A) Except as provided in subsection (i) of this Code section, all charges were dismissed or nolle prossed;

(B) The individual was sentenced in accordance with the provisions of subsection (a) or (c) of Code Section 16-13-2, and the individual successfully completed the terms and conditions of his or her probation;

(C) The individual pleaded guilty to or was found guilty of a violation of paragraph (2) or (3) of subsection (a) of Code Section 3-3-23 and was sentenced in accordance with the provisions of subsection (c) of Code Section 3-3-23.1, and the individual successfully completed the terms and conditions of his or her probation;

(D) The individual successfully completed a drug court treatment program, mental health treatment program, or veterans treatment program, the individual's case has been dismissed or nolle prossed, and he or she has not been arrested during such program, excluding any arrest for a nonserious traffic offense; or

(E) The individual was acquitted of all of the charges by a judge or jury unless, within ten days of the verdict, the prosecuting attorney demonstrates to the trial court through clear and convincing evidence that the harm otherwise resulting to the individual is clearly outweighed by the public interest in the criminal history record information being publicly available because either:

(i) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine; or

(ii) The individual has been formally charged with the same or similar offense within the previous five years.

(i) After the filing of an indictment or accusation, an individual's criminal history record information shall not be restricted if:

(1) The charges were nolle prossed or otherwise dismissed because:

(A) Of a plea agreement resulting in a conviction of the individual for an offense arising out of the same underlying transaction or occurrence as the conviction;

(B) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine;

(C) The conduct which resulted in the arrest of the individual was part of a pattern of criminal activity which was prosecuted in another court of the state or a foreign nation; or

(D) The individual had diplomatic, consular, or similar immunity or inviolability from arrest or prosecution;

(2) The charges were tried and some but not all of the charges resulted in an acquittal; or

(3) The individual was acquitted of all charges but it is later determined that the acquittal was the result of jury tampering or judicial misconduct.

(j)(1) When an individual had a felony charge dismissed or nolle prossed or was found not guilty of such charge but was convicted of a misdemeanor offense that was not a lesser included offense of the felony charge, such individual may petition the court in which he or she was accused or convicted, as applicable, or, if such charge was dismissed, the superior court in the county where the arrest occurred to restrict access to criminal history record information for the felony charge within four years of the arrest. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the arresting law enforcement agency and the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall grant an order restricting such criminal history record information if the court determines that the misde-

meanor conviction was not a lesser included offense of the felony charge and that the harm otherwise resulting to the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(2) When an individual was convicted of an offense and was sentenced to punishment other than the death penalty, but such conviction was vacated by the trial court or reversed by an appellate court or other post-conviction court, the decision of which has become final by the completion of the appellate process, and the prosecuting attorney has not retried the case within two years of the date the order vacating or reversing the conviction became final, such individual may petition the court in which he or she was convicted to restrict access to criminal history record information for such offense. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the judgment was reversed or vacated, the reason the prosecuting attorney has not retried the case, and the public's interest in the criminal history record information being publicly available.

(3) When an individual's case has remained on the dead docket for more than 12 months, such individual may petition the court in which the case is pending to restrict access to criminal history record information for such offense. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the case was placed on the dead docket; provided, however, that the court shall not grant such motion if an active warrant is pending for such individual.

(4)(A) When an individual was convicted in this state of a misdemeanor or a series of misdemeanors arising from a single incident, and at the time of such conviction such individual was a youthful offender, provided that such individual successfully completed the terms of his or her sentence and, since completing the terms of his or her sentence, has not been arrested for at least five years, excluding any arrest for a nonserious traffic offense, and provided, further, that he or she was not convicted in this state of a misdemeanor violation or under any other state's law with similar provisions of one or more of the offenses listed in subparagraph (B)

of this paragraph, he or she may petition the court in which the conviction occurred to restrict access to criminal history record information. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the individual's conduct and the public's interest in the criminal history record information being publicly available.

(B) Record restriction shall not be appropriate if the individual was convicted of:

(i) Child molestation in violation of Code Section 16-6-4;

(ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(iii) Sexual assault by persons with supervisory or disciplinary authority in violation of Code Section 16-6-5.1;

(iv) Keeping a place of prostitution in violation of Code Section 16-6-10;

(v) Pimping in violation of Code Section 16-6-11;

(vi) Pandering by compulsion in violation of Code Section 16-6-14;

(vii) Masturbation for hire in violation of Code Section 16-6-16;

(viii) Giving massages in a place used for lewdness, prostitution, assignation, or masturbation for hire in violation of Code Section 16-6-17;

(ix) Sexual battery in violation of Code Section 16-6-22.1;

(x) Any offense related to minors generally in violation of Part 2 of Article 3 of Chapter 12 of Title 16;

(xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or

(xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

(5) When an individual was arrested on a fugitive from justice warrant as provided in Code Section 17-13-4, such individual may

petition the superior court in the county where the arrest occurred to restrict access to criminal history record information for such warrant. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the arresting law enforcement agency and the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall grant an order restricting such criminal history record information if the court determines that circumstances warrant restriction and that the harm otherwise resulting to the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(k)(1) The center shall notify the arresting law enforcement agency of any criminal history record information, access to which has been restricted pursuant to this Code section, within 30 days of the date access to such information is restricted. Upon receipt of notice from the center that access to criminal history record information has been restricted, the arresting law enforcement agency or other law enforcement agency shall, within 30 days, restrict access to all such information maintained by such arresting law enforcement agency or other law enforcement agency for such individual's charge.

(2) An individual who has had criminal history record information restricted pursuant to this Code section may submit a written request to the appropriate county or municipal jail or detention center to have all records for such individual's charge maintained by the appropriate county or municipal jail or detention center restricted. Within 30 days of such request, the appropriate county or municipal jail or detention center shall restrict access to all such criminal history record information maintained by such appropriate county or municipal jail or detention center for such individual's charge.

(3) The center shall be authorized to unrestrict criminal history record information based on the receipt of a disposition report showing that the individual was convicted of an offense arising out of an arrest of which the information was restricted pursuant to this Code section.

(l) If criminal history record information is restricted pursuant to this Code section and if the entity declines to restrict access to such information, the individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the entity shall be upheld only if it is determined by clear and convincing evidence that the individual did not meet the criteria set forth in subsection (h) or (j) of this Code section.

(m)(1) For criminal history record information maintained by the clerk of court, an individual who has a record restricted pursuant to this Code section may petition the court with original jurisdiction over the charges in the county where the clerk of court is located for an order to seal all criminal history record information maintained by the clerk of court for such individual's charge. Notice of such petition shall be sent to the clerk of court and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient notice.

(2) The court shall order all criminal history record information in the custody of the clerk of court, including within any index, to be restricted and unavailable to the public if the court finds by a preponderance of the evidence that:

(A) The criminal history record information has been restricted pursuant to this Code section; and

(B) The harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(3) Within 60 days of the court's order, the clerk of court shall cause every document, physical or electronic, in its custody, possession, or control to be restricted.

(4) The person who is the subject of such sealed criminal history record information may petition the court for inspection of the criminal history record information included in the court order. Such information shall always be available for inspection, copying, and use by criminal justice agencies and the Judicial Qualifications Commission.

(n)(1) Except as provided in subsection (j) of this Code section, as to arrests occurring before July 1, 2013, an individual may, in writing, request the arresting law enforcement agency to restrict the criminal history record information of an arrest, including any fingerprints or photographs taken in conjunction with such arrest. Reasonable fees shall be charged by the arresting law enforcement agency and the center for the actual costs of restricting such records, provided that such fee shall not exceed $50.00.

(2) Within 30 days of receipt of such written request, the arresting law enforcement agency shall provide a copy of the request to the prosecuting attorney. Within 90 days of receiving the request, the prosecuting attorney shall review the request to determine if the request meets the criteria set forth in subsection (h) of this Code section for record restriction, and the prosecuting attorney shall notify the arresting law enforcement agency of his or her decision

within such 90 day period. If the prosecuting attorney denies such request, he or she shall cite with specificity the reason for such denial in writing and attach to such denial any relevant documentation in his or her possession used to make such denial. There shall be a presumption that the prosecuting attorney does not object to the request to restrict the criminal history record information if he or she fails to respond to the request for a determination within the 90 day period set forth in this paragraph. The arresting law enforcement agency shall inform the individual of the prosecuting attorney's decision, and, if record restriction is approved by the prosecuting attorney, the arresting law enforcement agency shall restrict the criminal history record information within 30 days of receipt of the prosecuting attorney's decision.

(3) If a prosecuting attorney declines an individual's request to restrict access to criminal history record information, such individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the prosecuting attorney to decline a request to restrict access to criminal history record information shall be upheld unless the individual demonstrates by clear and convincing evidence that the arrest is eligible for record restriction pursuant to subsection (h) of this Code section and the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(4) To restrict criminal history record information at the center, an individual shall submit a prosecuting attorney's approved record restriction request or a court order issued pursuant to paragraph (3) of this subsection to the center. The center shall restrict access to such criminal history record information within 30 days of receiving such information.

(o) Nothing in this Code section shall give rise to any right which may be asserted as a defense to a criminal prosecution or serve as the basis for any motion that may be filed in any criminal proceeding. The modification, correction, supplementation, amendment, or restriction of criminal history record information shall not abate or serve as the basis for the reversal of any criminal conviction.

(p) Any application to the center for access to or restriction of criminal history record information made pursuant to this Code section shall be made in writing on a form approved by the center. The center shall be authorized to develop and publish such procedures as may be necessary to carry out the provisions of this Code section. In adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall not apply.

(q) It shall be the duty of the entity to take such action as may be reasonable to prevent disclosure of information to the public which would identify any individual whose criminal history record information is restricted pursuant to this Code section.

(r) If the center has notified a firearms dealer that an individual is prohibited from purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title 16 and if the prohibition is the result of such individual being involuntarily hospitalized within the immediately preceding five years, upon such individual or his or her attorney making an application to inspect his or her records, the center shall provide the record of involuntary hospitalization and also inform the individual or attorney of his or her right to a hearing before the judge of the probate court or superior court relative to such individual's eligibility to possess or transport a handgun. (Code 1981, § 35-3-37, enacted by Ga. L. 2012, p. 899, § 6-2/HB 1176; Ga. L. 2013, p. 222, § 14/HB 349; Ga. L. 2014, p. 79, § 3/SB 320; Ga. L. 2014, p. 404, § 2-2/SB 382; Ga. L. 2016, p. 443, § 6B-7/SB 367; Ga. L. 2018, p. 550, § 2-8/SB 407.)

The 2013 amendment, effective July 1, 2013, in paragraph (j)(1), substituted the present provisions of the first sentence for the former provisions, which read: "When an individual had felony charges dismissed or nolle prossed or was found not guilty of felony charges but was convicted of a misdemeanor offense or offenses arising out of the same underlying transaction or occurrence, such individual may petition the superior court in the county where the arrest occurred to restrict access to criminal history record information for such felony charges within four years of the arrest.", and, near the end of the last sentence, substituted "that the misdemeanor conviction was not a lesser included offense of the felony charge and that the harm otherwise resulting to the individual clearly outweighs the public interest in the criminal history record information being publicly available" for "the charges in question did not arise out of the same underlying transaction or occurrence"; in paragraph (n)(1), substituted "Except as provided in subsection (j) of this Code section, as" for "As" at the beginning of the first sentence; in paragraph (n)(2), in the second sentence, substituted "the request meets the criteria set forth in subsection (h) of this Code section for" for "he or she agrees to", and added the third and fourth sentences; in paragraph (n)(3), substituted the present provisions of the third sentence for the former provisions, which read: "A decision of the prosecuting attorney shall not be upheld if it is determined by clear and convincing evidence that the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available"; and, in paragraph (n)(4), substituted "of receiving" for "from receiving" in the last sentence. See Editor's notes for applicability.

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, added present paragraph (a)(9); redesignated former paragraph (a)(9) as present paragraph (a)(10); and, near the middle of subparagraph (h)(2)(C), substituted a comma for "or" following "drug court treatment program" and inserted "or veterans treatment program,". The second 2014 amendment, effective July 1, 2014, substituted "shoplifting or refund fraud in violation of Code Section 16-8-14 or 16-8-14.1, as applicable" for "shoplifting in violation of Code Section 16-8-14" in division (j)(4)(B)(xi).

The 2016 amendment, effective July 1, 2016, at the end of paragraph (a)(6),

added "or to governmental agencies or licensing and regulating agencies pursuant to Code Section 35-3-35"; rewrote subsection (h); and substituted the present provisions of paragraph (j)(5) for the former provisions, which read: "Any party may file an appeal of an order entered pursuant to this subsection as provided in Code Section 5-6-34.".

The 2018 amendment, effective July 1, 2018, inserted "court in which he or she was accused or convicted, as applicable, or, if such charge was dismissed, the" in the middle of the first sentence of paragraph (j)(1); substituted "petition the court in which he or she was convicted" for "petition the superior court in the county where the conviction occurred" near the end of the first sentence of paragraph (j)(2); and substituted "petition the court in which" for "petition the superior court in the county where" in the middle of the first sentence of paragraph (j)(3) and near the end of the first sentence of subparagraph (j)(4)(A).

Editor's notes. — Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2014, p. 79, § 1/SB 320, not codified by the General Assembly, provides that: "The General Assembly recognizes that veterans have provided and continue to provide an invaluable service to our country and this state. In connection with a veteran's service, some servicemen and servicewomen have incurred physical, emotional, or mental impairments which cause or contribute to behaviors that may draw a veteran into the criminal justice system. The General Assembly has determined that having dedicated veterans court divisions is important to address the specialized treatment needs of veterans and that there are resources, services, and treatment options that are unique to veterans that may best facilitate a veteran's reentry into society."

Ga. L. 2014, p. 404, § 3-1/SB 382, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2014, and shall apply to all conduct occurring on or after such date."

Law reviews. — For article on the 2012 enactment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012). For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Ga. St. U.L. Rev. 17 (2013). For annual survey on criminal law, see 66 Mercer L. Rev. 37 (2014). For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

JUDICIAL DECISIONS

Application of amendments. — Recent amendments to Georgia's criminal history record information statute, O.C.G.A. § 35-3-37, are to be applied to information regarding arrests occurring prior to the amendments' effective date as the statute itself made clear that the statute does apply to information regarding arrests pre-dating the amendments, and such application presents no constitutional problem. Mosley v. Lowe, 298 Ga. 363, 782 S.E.2d 43 (2016).

County erred and should have granted the defendant's request to have the defendant's arrest record restricted pursuant to O.C.G.A. § 35-3-37(h) because it was undisputed that the 1996 assault charge against the defendant was nolle prossed and, as such, that disposition did not fall within any of the exceptions enumerated in subsection (i)(1) of the statute and the defendant was eligible for record restriction under the current statute. Mosley v. Lowe, 298 Ga. 363, 782 S.E.2d 43 (2016).

Sealing clerk's records. — Because the provisions of O.C.G.A. § 35-3-37(m)(2) applied to arrests that pre-dated July 1, 2013, the trial court should have considered the merits of the defendant's motion to seal the clerk's records, and the order denying the defendant's motion to seal the clerk of court's records was vacated.

Woodhouse v. State, 336 Ga. App. 880, 785 S.E.2d 429 (2016).

Expungement not supported. — Former defendant's petition under O.C.G.A. § 35-3-37(j)(2) to expunge the defendant's record was denied; because the defendant had been tried twice already, and the child molestation victim and similar crimes witnesses did not wish to go through a third trial, the prosecutor decided not to press the charges after a reversal for ineffective assistance of counsel. Gibbs v. Bright, 330 Ga. App. 851, 769 S.E.2d 590 (2015).

Because imposition of a sentence upon a plea of nolo contendere was not a dismissal or a nolle prosse, O.C.G.A. § 35-3-37(h)(2)(A), providing for restriction of access to certain criminal history records, did not apply to an applicant's plea of nolo contendre to theft by taking; and the applicant's civil rights claim was barred by the statute of limitations, O.C.G.A. § 9-3-33. Nasir v. Gwinnett County State Court, 341 Ga. App. 63, 798 S.E.2d 695 (2017).

Appellate jurisdiction was in Court of Appeals absent viable constitutional challenge. — Because an appeal of the denial of a motion to seal a criminal record under O.C.G.A. § 35-3-37(m) failed to present a viable challenge to the statute's constitutionality, Ga. Const. 1983, Art. VI, Sec. VI, Para. II(1), because the challenge (a separation of powers argument, Ga. Const. 1983, Art. I, Sec. II, Para. III, based on the Supreme Court's record-keeping authority under Ga. Const. 1983, Art. VI, Sec. IX, Para. I, and Ga. Unif. Super. Ct. R. 21.4) was not raised below, jurisdiction was properly before the Court of Appeals, pursuant to O.C.G.A. § 5-6-34(a)(12). Doe v. State, No. S17A1694, 2018 Ga. LEXIS 126 (Mar. 5, 2018).

Cited in Sosniak v. State, 292 Ga. 35, 734 S.E.2d 362 (2012).

RESEARCH REFERENCES

ALR. — Judicial expunction of criminal record of convicted adult in absence of authorizing statute, 68 A.L.R.6th 1.

Judicial expunction of criminal record of convicted adult under statute — General principles, and expunction of criminal records under statutes providing for such relief where criminal proceeding is terminated in favor of defendant, upon completion of probation, upon suspended sentence, and where expungement relief predicated upon type, and number, of offenses, 69 A.L.R.6th 1.

Judicial expunction of criminal record of convicted adult under statute — Expunction under statutes addressing "first offenders" and "innocent persons," where conviction was for minor drug or other offense, where indictment has not been presented against accused or accused has been released from custody, and where court considered impact of *nolle prosequi,* partial dismissal, pardon, rehabilitation, and lesser-included offenses, 70 A.L.R.6th 1.

35-3-39.1. National Crime Prevention and Privacy Compact; ratification; criminal history records repository.

Law reviews. — For note, "Just You and Me and Netflix Makes Three: Implications for Allowing 'Frictionless Sharing' of Personally Identifiable Information under the Video Privacy Protection Act," see 20 J. Intell. Prop. L. 413 (2013).

ARTICLE 4

MISSING CHILDREN INFORMATION CENTER

35-3-83. Missing child reports.

Upon the filing of a police report by the parent, guardian, caretaker, governmental unit responsible for the child, or other person with legal custody of the child that a child is missing, the local law enforcement agency receiving such report shall notify all of its on-duty law enforcement officers of the existence of the missing child report, communicate the report to all other law enforcement agencies having jurisdiction in the county and all law enforcement agencies of jurisdictions geographically adjoining that of the local law enforcement agency, and transmit the report to the Missing Children Information Center. (Code 1981, § 35-3-83, enacted by Ga. L. 1986, p. 659, § 1; Ga. L. 2014, p. 481, § 1/SB 358.)

The 2014 amendment, effective July 1, 2014, substituted "parent, guardian, caretaker, governmental unit responsible for the child, or other person with legal custody of the child" for "parent or guardian".

ARTICLE 6A

DNA SAMPLING, COLLECTION, AND ANALYSIS

Law reviews. — For comment, "DNA Collection Acts and the Fourth Amendment: A Call for Legislative Reform in Georgia to Implement Collection of Arrestees' DNA," see 32 Ga. St. U.L. Rev. 513 (2016).

35-3-160. DNA analysis upon conviction of certain sex offenses.

JUDICIAL DECISIONS

Evidence found based on a DNA match not excluded under federal law. — Evidence produced after a comparison of DNA from a robbery scene to a Georgia Bureau of Investigation database did not violate the defendant's Fourth Amendment rights because the sample was taken pursuant to O.C.G.A. §§ 35-3-160(b) and 35-3-165(b), while the defendant was serving a sentence under Georgia's First Offender Act, O.C.G.A. § 42-8-60, and the match was made when the defendant was on probation with a reduced expectation of privacy. United States v. Hinton, 676 Fed. Appx. 842 (11th Cir. 2017) (Unpublished).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state statutes and rules governing requests for postconviction DNA testing, 72 A.L.R.6th 227.

35-3-163. Dissemination of information in data bank to law enforcement officials; comparison of profile; request for search; separate statistical data base authorized; fee for search and comparative analysis.

(a) It shall be the duty of the bureau to receive samples and to analyze, classify, and file the results of DNA identification characteristics of samples submitted pursuant to Code Section 35-3-160 and to make such information available as provided in this Code section. The results of an analysis and comparison of the identification of the characteristics from two or more biological samples shall be made available directly to federal, state, and local law enforcement officers upon a request made in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the bureau.

(b) Upon request from a prosecutor or law enforcement agency, the bureau may compare a DNA profile from an analysis of a sample from a suspect in a criminal investigation where the sample was obtained through a search warrant, consent of the suspect, court order, or other lawful means to DNA profiles lawfully collected and maintained by the bureau. The bureau shall not add a DNA profile of any such suspect to any DNA data bank except upon conviction as provided in this article.

(c)(1) Upon his or her request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank. Only when a sample or DNA profile supplied by the requestor satisfactorily matches the requestor's profile in the data bank shall the existence of data in the data bank be confirmed or identifying information from the data bank be disseminated.

(2) The name of the convicted felon whose profile is contained in the data bank may be related to any other data bases which are constructed for law enforcement purposes and may be disseminated only for law enforcement purposes.

(3) Upon a showing by the accused in a criminal proceeding that access to the DNA data bank is material to the investigation, preparation, or presentation of a defense at trial or in a postconviction proceeding, a superior court having proper jurisdiction over such criminal proceeding shall direct the bureau to compare a DNA profile which has been generated by the accused through an independent test against the data bank, provided that such DNA profile has been generated in accordance with standards for forensic DNA analysis adopted pursuant to 42 U.S.C. Section 14131.

(d) The bureau shall develop procedures governing the methods of obtaining information from the data bank in accordance with this Code section and procedures for verification of the identity and authority of the requestor. The bureau shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

(e) The bureau may create a separate statistical data base composed of DNA profiles of samples of persons whose identity is unknown. Nothing in this Code section or Code Section 35-3-164 shall prohibit the bureau from sharing or otherwise disseminating the information in the statistical data base with law enforcement or criminal justice agencies within or outside the state.

(f) The bureau may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law enforcement agency outside of this state. (Code 1981, § 35-3-163, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80; Ga. L. 2013, p. 141, § 35/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "composed of DNA" for "comprised of DNA" in the first sentence of subsection (e).

35-3-165. Expungement of profile in data bank upon reversal and dismissal of conviction.

JUDICIAL DECISIONS

Evidence found based on a DNA match not excluded under federal law. — Evidence produced after a comparison of DNA from a robbery scene to a Georgia Bureau of Investigation database did not violate the defendant's Fourth Amendment rights because the sample was taken pursuant to O.C.G.A. §§ 35-3-160(b) and 35-3-165(b), while the defendant was serving a sentence under Georgia's First Offender Act, O.C.G.A. § 42-8-60, and the match was made when the defendant was on probation with a reduced expectation of privacy. United States v. Hinton, 676 Fed. Appx. 842 (11th Cir. 2017) (Unpublished).

RESEARCH REFERENCES

ALR. — Judicial expunction of criminal record of convicted adult in absence of authorizing statute, 68 A.L.R.6th 1.

Judicial expunction of criminal record of convicted adult under statute — General principles, and expunction of criminal records under statutes providing for such relief where criminal proceeding is terminated in favor of defendant, upon completion of probation, upon suspended sentence, and where expungement relief predicated upon type, and number, of offenses, 69 A.L.R.6th 1.

Judicial expunction of criminal record of convicted adult under statute — Expunction under statutes addressing "first offenders" and "innocent persons," where conviction was for minor drug or other offense, where indictment has not been presented against accused or accused has been released from custody, and where court considered impact of *nolle prosequi,*

partial dismissal, pardon, rehabilitation, and lesser-included offenses, 70 A.L.R.6th 1.

ARTICLE 7

STATE-WIDE ALERT SYSTEM FOR MISSING DISABLED ADULTS

35-3-170. Short title.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-171. Definitions.

As used in this article, the term:

(1) "Alert system" means the state-wide "Mattie's Call" alert system for missing disabled adults and medically endangered persons.

(2) "Disabled adult" means an adult who is developmentally impaired or who suffers from dementia or some other cognitive impairment.

(3) "Local law enforcement agency" means a law enforcement agency with jurisdiction over the investigation of a missing disabled adult or other medically endangered person.

(4) "Medically endangered person" means a person with a known medical condition that might reasonably cause such person to become incapacitated or that may result in life-threatening physiological conditions likely to lead to serious bodily injury or death if not immediately treated. (Code 1981, § 38-3-111, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-171, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, added "and medically endangered persons" to the end of paragraph (1); in paragraph (3), deleted "local" following "means a" near the beginning and added "or other medically endangered persons" at the end; and added paragraph (4). See Editor's notes for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen.

No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-172. Development and implementation of state-wide alert system for disabled adults and medically endangered persons.

(a) With the cooperation of the office of the Governor, the Georgia Lottery Corporation, and other appropriate law enforcement agencies in this state, the bureau shall develop and implement a state-wide alert system to be activated on behalf of missing disabled adults and medically endangered persons.

(b) Activation of a state-wide missing person alert system shall not prevent or prohibit any other state or local law enforcement agency from taking additional measures in response to the receipt of a missing person report. (Code 1981, § 38-3-112, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-172, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, designated the existing provisions of this Code section as subsection (a); in subsection (a), added "and medically endangered persons" at the end; and added subsection (b). See Editor's notes for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-173. Director to be state-wide coordinator for alert system.

(a) The director is the state-wide coordinator of the alert system.

(b) The director shall adopt rules and issue directives as necessary to ensure proper implementation of the alert system. The rules and directives shall include instructions on the procedures for activating and deactivating the alert system.

(c) The director shall prescribe forms for use by local law enforcement agencies in requesting activation of the alert system.

(d) No rule or directive adopted by the director shall mandate a minimum waiting period before the alert system may be activated or a request by local law enforcement agencies may be submitted to the bureau; provided, however, that it shall remain within the discretion of the director, as provided in this article, whether the alert system shall be activated at the request of a local law enforcement agency.

(e) When making a determination whether to activate or whether to request the activation of a state-wide missing person alert system, both the director and the requesting local law enforcement agency shall take into consideration the known medical condition of the missing person if the medical condition may reasonably be considered a cause for the inability to locate such missing person. In so considering the medical condition of a missing person, particularly if such condition may be immediately life-threatening or incapacitating, the director or other authorized person and the requesting law enforcement official shall be authorized, within his or her discretion, to initiate and request, respectively, a state-wide endangered person advisory. (Code 1981, § 38-3-113, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-173, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, added subsections (d) and (e). See Editor's notes for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-174. Time for reporting elopement of disabled person from personal care home and assisted living community.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-175. Recruitment of media, private and governmental entities, and others for assistance in developing and implementing alert system; contractual agreements for system support.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date

provisions that precede the date of approval by the Governor.

35-3-176. Criteria for activating alert system.

(a) On notification by a local law enforcement agency that a disabled adult or medically endangered person is missing, the director shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) A local law enforcement agency believes that a disabled adult or medically endangered person is missing;

(2) A local law enforcement agency believes that the disabled adult or medically endangered person is in immediate danger of serious bodily injury or death;

(3) A local law enforcement agency confirms that an investigation has taken place that verifies the disappearance and eliminates alternative explanations for the disabled adult's or medically endangered person's disappearance; and

(4) Sufficient information is available to disseminate to the public that could assist in locating the disabled adult or medically endangered person.

(b) The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the disabled adult or medically endangered person did not leave a certain geographic location.

(c) The bureau may modify the criteria described by subsection (a) of this Code section as necessary for the proper implementation of the alert system. (Code 1981, § 38-3-115, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-176, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, inserted "or medically endangered person" throughout this Code section. See Editor's notes for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-177. Verification that criteria for activation have been met.

Before requesting activation of the alert system, a law enforcement agency shall verify that the criteria described by subsection (a) of Code Section 35-3-176 have been satisfied. The law enforcement agency shall assess the appropriate boundaries of the alert, based on the nature of the disabled adult or medically endangered person and the circumstances surrounding the disappearance. On verification of the criteria, the law enforcement agency shall immediately contact the bureau to request activation and shall supply the necessary information on the forms prescribed by the director. (Code 1981, § 38-3-116, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-177, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, deleted "local" preceding "law enforcement" three times throughout the Code section and inserted "or medically endangered person" in the second sentence. See Editor's notes for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-178. Obligations of agencies participating in alert system; participation of Georgia Lottery Corporation in disseminating alert information through retail establishments.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-179. Termination of alert system with respect to particular disabled adult or medically endangered person.

The director shall terminate any activation of the alert system with respect to a particular disabled adult or medically endangered person if:

(1) The person is located or the disappearance is otherwise resolved; or

(2) The director determines that the alert system is no longer an effective tool for locating and recovering the disabled adult or medically endangered person. (Code 1981, § 38-3-118, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-179, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, inserted "or medically endangered person" twice in this Code section and substituted "person" for "adult" in paragraph (1). See Editor's notes for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-180. Immunity from civil damages for dissemination of alert information.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

ARTICLE 8

ALERT SYSTEMS FOR UNAPPREHENDED SUSPECTS

35-3-190. State-wide alert system for unapprehended murder or rape suspects determined to be serious public threats.

(a) There is established a state-wide alert system known as "Kimberly's Call."

(b) As used in this article, the term "local law enforcement agency" means a local law enforcement agency with jurisdiction over the search for a suspect in a case of murder or rape.

(c) The director shall develop and implement a state-wide alert system to be activated when a suspect for the crime of murder, felony murder, or murder in the second degree as defined in Code Section 16-5-1 or rape as defined in Code Section 16-6-1 has not been apprehended and law enforcement personnel have determined that the suspect may be a serious threat to the public.

(d) The provisions of Code Sections 35-3-173, 35-3-175, and 35-3-178 shall also apply to "Kimberly's Call" as set forth in this Code section.

(e) On notification by a local law enforcement agency that a suspect in a case of murder or rape has not been apprehended and may be a serious threat to the public, the director shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) A local law enforcement agency believes that a suspect has not been apprehended;

(2) A local law enforcement agency believes that the suspect may be a serious threat to the public; and

(3) Sufficient information is available to disseminate to the public that could assist in locating the suspect.

(f) The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the suspect did not leave a certain geographic location.

(g) Before requesting activation of the alert system, a local law enforcement agency must verify that the criteria described by subsection (e) of this Code section have been satisfied. The local law enforcement agency shall assess the appropriate boundaries of the alert based on the nature of the suspect and the circumstances surrounding the crime.

(h) The director shall terminate any activation of the alert system with respect to a particular suspect if:

(1) The suspect is located or the incident is otherwise resolved; or

(2) The director determines that the alert system is no longer an effective tool for locating the suspect.

(i) Any entity or individual participating in the "Kimberly's Call" alert system pursuant to this Code section shall not be liable for any civil damages arising from the dissemination of any alert generated pursuant to the "Kimberly's Call" alert system. (Code 1981, § 38-3-120, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 38-3-130, as redesignated by Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-190, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 444, § 2-10/HB 271.)

The 2014 amendment, effective July 1, 2014, substituted "murder, felony murder, or murder in the second degree" for "murder" in the middle of subsection (c).

ARTICLE 9

GEORGIA INFORMATION SHARING AND ANALYSIS CENTER

Effective date. — This article became effective July 1, 2016.

35-3-200. Definitions.

As used in this article, the term:

(1) "Center" means the Georgia Information Sharing and Analysis Center.

(2) "Fusion center" means collaborative effort which combines resources, expertise, intelligence, and other information from various agencies of state and local governments with the goal of maximizing the ability of this state to detect, prevent, and respond to criminal activities or to otherwise engage in homeland security activities.

(3) "Homeland security activity" means any activity related to the prevention or discovery of, response to, or recovery from:

(A) A terrorist attack;

(B) A hostile military or paramilitary action; or

(C) An extraordinary law enforcement emergency, as designated by the Governor. (Code 1981, § 35-3-200, enacted by Ga. L. 2016, p. 91, § 5/SB 416; Ga. L. 2018, p. 681, § 2-1/HB 779.)

The 2018 amendment, effective July 1, 2018, added ", as designated by the Governor" at the end of subparagraph (3)(C).

35-3-201. Georgia Information Sharing and Analysis Center established; purpose.

There is established the Georgia Information Sharing and Analysis Center as a distinct division within the Georgia Bureau of Investigation. The center shall be a fusion center maintaining criminal intelligence and terrorism analytical components. The officer or agent charged with operating the center shall report directly to the director. (Code 1981, § 35-3-201, enacted by Ga. L. 2016, p. 91, § 5/SB 416; Ga. L. 2018, p. 681, § 2-1/HB 779.)

The 2018 amendment, effective July 1, 2018, inserted "as a distinct division" in the first sentence and added the third sentence.

35-3-202. Responsibilities of director for center operations.

Reserved. Repealed by Ga. L. 2018, p. 681, § 2-1/HB 779, effective July 1, 2018.

Editor's notes. — This Code section was based on Code 1981, § 35-3-202, enacted by Ga. L. 2016, p. 91, § 5/SB 416.

35-3-203. Cooperative activities of center.

(a) The center shall share and provide homeland security activity information to the director of emergency management and homeland security, including, but not limited to, threats, warnings, and developing situations, when an investigation reveals conduct of a terroristic nature or in material support of terroristic activities, recruitment of terrorists, or information on the activities of known terrorist organizations.

(b) The center shall liaise with the Federal Bureau of Investigation, Joint Terrorism Task Force, United States Department of Homeland Security, and other local, state, and federal intelligence and law enforcement officials for purposes of carrying out its duties and responsibilities under this article. (Code 1981, § 35-3-203, enacted by Ga. L. 2016, p. 91, § 5/SB 416; Ga. L. 2018, p. 681, § 2-1/HB 779.)

The 2018 amendment, effective July 1, 2018, deleted "director through the" following "The" near the beginning of subsection (a); deleted "the bureau," following "liaise with" near the beginning of subsection (b); deleted former subsection (c), which read: "The center shall allow unrestricted access to secure communications equipment to the director of emergency management and homeland security and his or her representatives who possess the appropriate federally approved security clearances for the dissemination of homeland security activity information by the United States Department of Homeland Security."; and deleted former subsection (d), which read: "The director of emergency management and homeland security shall serve as this state's security manager for the purpose of identifying and processing state personnel for security clearances through the United States Department of Homeland Security."

35-3-204. Membership; availability of analysts.

(a) Membership in the center shall consist of the director, the director of emergency management and homeland security, the commissioner of public safety, the commissioner of natural resources, the commissioner of corrections, the state fire marshal, the Attorney General, the adjutant general, and state and local fire service, law enforcement, homeland security, emergency management, corrections, and other appropriate agencies and disciplines as determined by the director. Such members may assign or make available their analysts or other personnel to the center as such need is determined by the director.

(b) The director of emergency management and homeland security may maintain Georgia Emergency Management and Homeland Security Agency analysts in the center as determined by the director of emergency management and homeland security. Such analysts assigned to the center who are funded by or employees of the Georgia Emergency Management and Homeland Security Agency shall focus on homeland security activity. (Code 1981, § 35-3-204, enacted by Ga. L. 2016, p. 91, § 5/SB 416; Ga. L. 2018, p. 681, § 2-1/HB 779.)

The 2018 amendment, effective July 1, 2018, in subsection (a), deleted "of emergency management and homeland security in consultation with the director" following "the director" at the end of the first sentence, in the second sentence, substituted "may assign" for "shall assign" near the beginning, deleted "of emergency management and homeland security" following "the director" at the end; and, in subsection (b), in the first sentence, substituted "may maintain" for "shall maintain" near the beginning, and deleted "as needed" following "in the center" near the middle, and added the second sentence.

CHAPTER 6

STATE VICTIM SERVICES COMMISSION

35-6-1. Creation and responsibility.

Editor's notes. — The history line following this Code section in the bound volume should include a citation to Ga. L. 2004, Ex. Sess., p. ES3, § 25/HB 1EX rather than to Ga. L. 2005, p. ES3, § 25/HB 1EX.

35-6-2. Membership of commission; terms of members; procedure.

Editor's notes. — The history line following this Code section in the bound volume should include a citation to Ga. L. 2004, Ex. Sess., p. ES3, § 25/HB 1EX rather than to Ga. L. 2005, p. ES3, § 25/HB 1EX.

35-6-3. Powers and duties of commission; ombudsman program.

Editor's notes. — The history line following this Code section in the bound volume should include a citation to Ga. L. 2004, Ex. Sess., p. ES3, § 25/HB 1EX rather than to Ga. L. 2005, p. ES3, § 25/HB 1EX.

35-6-4. Responsibility of state auditor; inspection of documentation.

Editor's notes. — The history line following this Code section in the bound volume should include a citation to Ga. L. 2004, Ex. Sess., p. ES3, § 25/HB 1EX rather than to Ga. L. 2005, p. ES3, § 25/HB 1EX.

CHAPTER 6A

CRIMINAL JUSTICE COORDINATING COUNCIL

Sec.
35-6A-2. Creation; assignment to Georgia Bureau of Investigation; definitions.
35-6A-3. Membership; vacancies; membership not bar to holding public office.
35-6A-7. Functions and authority of council.
35-6A-11. Advisory board created; membership.
35-6A-12. Role of the advisory board.
35-6A-13. Criminal Case Data Exchange Board; membership; operation.
35-6A-14. Role of board; public access.

35-6A-2. Creation; assignment to Georgia Bureau of Investigation; definitions.

(a) There is established the Criminal Justice Coordinating Council of the State of Georgia which is assigned to the Georgia Bureau of Investigation for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) As used in this chapter, the term:

(1) "Board" means the Criminal Case Data Exchange Board.

(2) "Council" means the Criminal Justice Coordinating Council. (Ga. L. 1981, p. 1306, § 2; Ga. L. 2001, p. 311, § 2; Ga. L. 2018, p. 550, § 1-5/SB 407.)

The 2018 amendment, effective July 1, 2018, designated the existing provisions of this Code section as subsection (a); and added subsection (b).

35-6A-3. Membership; vacancies; membership not bar to holding public office.

(a) The Criminal Justice Coordinating Council shall consist of 27 members and shall be composed as follows:

(1) The chairperson of the Georgia Peace Officer Standards and Training Council, the director of homeland security, the chairperson of the Judicial Council of Georgia, the chairperson of the Council of Accountability Court Judges of Georgia, the chairperson of the Prosecuting Attorneys' Council of the State of Georgia, the commissioner of corrections, the chairperson of the Board of Corrections, the commissioner of community supervision, the chairperson of the Board of Community Supervision, the vice chairperson of the Board of Public Safety, the chairperson of the State Board of Pardons and Paroles, the State School Superintendent, the commissioner of community affairs, the president of the Council of Juvenile Court Judges,

the chairperson of the Georgia Public Defender Council, the chairperson of the Governor's Office for Children and Families, and the commissioner of juvenile justice or their designees shall be ex officio members of the council, as full voting members of the council by reason of their office; and

(2) Ten members shall be appointed by the Governor for terms of four years, their initial appointments, however, being four for four-year terms, two for three-year terms, and four for two-year terms. Appointments shall be made so that there are always on the council the following persons: one county sheriff, one chief of police, one mayor, one county commissioner, one superior court judge, four individuals who shall be, by virtue of their training or experience, knowledgeable in the operations of the criminal justice system of this state, and one individual who shall be, by virtue of his or her training and experience, knowledgeable in the operations of the entire spectrum of crime victim assistance programs delivering services to victims of crime. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the council, vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term.

(c) The initial terms for all 19 original members shall begin July 1, 1981. The initial term for the member added in 1985 shall begin July 1, 1985. The initial term for the member added in 1988 shall begin July 1, 1988. The initial term for the member added in 1989 shall begin July 1, 1989. The State School Superintendent shall be a member effective on July 1, 1989. The chairperson of the Georgia Public Defender Council shall become a member on December 31, 2003. The chairperson of the Council of Accountability Court Judges of Georgia shall become a member on July 1, 2015.

(d) Membership on the council does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership. (Ga. L. 1981, p. 1306, § 3; Ga. L. 1983, p. 518, § 1; Ga. L. 1984, p. 22, § 35; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 544, § 5; Ga. L. 1988, p. 242, § 1; Ga. L. 1989, p. 288, § 1; Ga. L. 1989, p. 1245, § 1; Ga. L. 1990, p. 8, § 35; Ga. L. 1991, p. 435, § 1; Ga. L. 1992, p. 1983, § 35; Ga. L. 1997, p. 417, § 1; Ga. L. 1997, p. 1453, § 1; Ga. L. 1998, p. 128, § 35; Ga. L. 2003, p. 191, § 8; Ga. L. 2004, p. 988, § 1; Ga. L. 2008, p. 568, § 11/HB 1054; Ga. L. 2015, p. 422, § 5-55/HB 310; Ga. L. 2015, p. 519, § 8-8/HB 328; Ga. L. 2018, p. 1112, § 35/SB 365.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, substituted "26 members" for "24 members" in the middle of subsection (a); and inserted "the commissioner of community supervision, the chairperson of the Board of Community Supervision," in the middle of paragraph (a)(1). See Editor's notes for applicability. The second 2015 amendment, effective July 1, 2015, substituted "Georgia Public Defender Council" for "Georgia Public Defender Standards Council" near the middle of paragraph (a)(1) and in the next to the last sentence of subsection (c); substituted "25 members" for "24 members" near the middle of subsection (a); inserted "the chairperson of the Council of Accountability Court Judges of Georgia," near the beginning of paragraph (a)(1); and added the last sentence in subsection (c). See the Code Commission note regarding the effect of these amendments.

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, substituted "27 members" for "25 members" in subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-3, in 2015, the amendment of the introductory language of subsection (a) of this Code section by Ga. L. 2015, p. 422, § 5-55/HB 310, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 519, § 8-8/HB 328, due to irreconcilable conflict.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

35-6A-7. Functions and authority of council.

The council is vested with the following functions and authority:

(1) To cooperate with and secure cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this chapter;

(2) To prepare, publish in print or electronically, and disseminate fundamental criminal justice information of a descriptive and analytical nature to all components of the criminal justice system of this state, including law enforcement agencies, the courts, juvenile justice agencies, and correctional agencies;

(3) To serve as the state-wide clearing-house for criminal justice information and research;

(4) To maintain a research program in order to identify and define significant criminal justice problems and issues and effective solutions and to publish in print or electronically special reports as needed;

(5) In coordination and cooperation with all components of the criminal justice system of this state, to develop criminal justice legislative proposals and executive policy proposals reflective of the priorities of the entire criminal justice system of this state;

(6) To serve in an advisory capacity to the Governor on issues impacting the criminal justice system of this state;

(7) To coordinate high visibility criminal justice research projects and studies which cross traditional system component lines with a state-wide impact;

(8) To convene periodically state-wide criminal justice conferences involving key executives in the criminal justice system of this state and elected officials for the purpose of developing, prioritizing, and publicizing a policy agenda for the criminal justice system of this state;

(9) To provide for the interaction, communication, and coordination of all components of the criminal justice system of this state for the purpose of improving this state's response to crime and its effects;

(10) To administer gifts, grants, and donations for the purpose of carrying out this chapter;

(11) To promulgate rules governing the approval of victim assistance programs as provided for in Article 8 of Chapter 21 of Title 15;

(12) To supervise the preparation, administration, and implementation of the three-year juvenile justice plan as provided by this chapter; and

(13) To do any and all things necessary and proper to enable it to perform wholly and adequately its duties and to exercise the authority granted to it. (Ga. L. 1981, p. 1306, § 7; Ga. L. 1995, p. 260, § 4; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 875, § 2/SB 173; Ga. L. 2015, p. 890, § 1/HB 263; Ga. L. 2016, p. 864, § 35/HB 737.)

The 2015 amendment, effective July 1, 2015, inserted "juvenile justice agencies," near the end of paragraph (2); deleted "and" at the end of paragraph (11); added paragraph (12); and redesignated former paragraph (12) as present paragraph (13).

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, substituted "which cross traditional system component lines with a state-wide impact" for "with a state-wide impact, which studies and projects cross traditional system component lines" in paragraph (7).

Law reviews. — For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015).

35-6A-11. Advisory board created; membership.

(a) There is established an advisory board to the council which shall consist of at least 15 and not more than 33 members appointed by the Governor who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency, the administration of juvenile justice, or the reduction of juvenile delinquency and shall be composed of:

(1) At least three members of the council, two of whom are not full-time government employees or elected officials;

(2) At least one locally elected official representing general purpose local government;

(3) Representatives of law enforcement and juvenile justice agencies, including juvenile and family court judges, prosecuting attorneys, attorneys for children and youth, and probation workers;

(4) Representatives of public agencies concerned with delinquency prevention or treatment, such as welfare, social services, mental health, education, special education, recreation, and youth services;

(5) Representatives of private nonprofit organizations, including individuals with a special focus on preserving and strengthening families, parent groups and parent self-help groups, youth development, delinquency prevention and treatment, neglected or dependent children, the quality of juvenile justice, education, and social services for children;

(6) Volunteers who work with delinquent children or potential delinquent children;

(7) Youth workers involved with programs that are alternatives to incarceration, including programs providing organized recreation activities;

(8) Individuals with special experience and competence in addressing problems related to school violence and vandalism and alternatives to suspension and expulsion; and

(9) Individuals with special experience and competence in addressing problems related to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence.

(b)(1) A majority of the members of the advisory board, including the chairperson, shall not be full-time employees of the federal, state, or local government.

(2) At least one-fifth of the members of the advisory board shall be under 24 years of age at the time of their appointment.

(3) At least three members shall have been or shall currently be under the jurisdiction of the juvenile justice system of this state.

(c) Membership on the advisory board shall not constitute public office and no member shall be disqualified from holding public office by reason of his or her membership.

(d) The advisory board shall elect a chairperson from among its membership who must also be a member of the council. The advisory board may elect such other officers and committees as it considers appropriate.

(e) Members of the advisory board shall serve without compensation, although each member of the advisory board shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the office. Such reimbursement shall be limited to all travel and other expenses necessarily incurred through service on the advisory board, in compliance with this state's travel rules and regulations. However, in no case shall a member of the advisory board be reimbursed for expenses incurred in the member's capacity as the representative of another state agency. (Code 1981, § 35-6A-11, enacted by Ga. L. 2015, p. 890, § 2/HB 263.)

Effective date. — This Code section became effective July 1, 2015.

35-6A-12. Role of the advisory board.

The advisory board shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties. The advisory board shall also meet on the call of the chairperson, the director of the council, the chairperson of the council, or the Governor;

(2) Maintain minutes of its meetings;

(3) Participate in the development and review of this state's juvenile justice plan prior to submission to the council for final action;

(4) Be afforded the opportunity to review and comment, not later than 30 days after their submission to the advisory board, on all juvenile justice and delinquency prevention grant applications submitted to the council;

(5) Using the combined expertise and experience of its members, provide regular advice and counsel to the director of the council to enable the council to carry out its statutory duties under this article; and

(6) Carry out such duties that may be required by federal law or regulation so as to enable this state to receive and disburse federal funds for juvenile delinquency prevention and treatment. (Code 1981, § 35-6A-12, enacted by Ga. L. 2015, p. 890, § 2/HB 263.)

Effective date. — This Code section became effective July 1, 2015.

35-6A-13. Criminal Case Data Exchange Board; membership; operation.

(a) There is established the Criminal Case Data Exchange Board to the council which shall consist of 15 members as follows:

(1) The director of the council, the director of the Georgia Crime Information Center, the director of the Office of Planning and Budget, the director of the Administrative Office of the Courts, the director of the Georgia Public Defender Council, the commissioner of administrative services, the commissioner of corrections, the commissioner of community supervision, the executive director of the Georgia Technology Authority, the executive counsel of the Governor, and a representative of the Prosecuting Attorneys' Council of the State of Georgia, provided that any such member may allow a designee to represent him or her at a board meeting and vote in his or her stead; and

(2) Four members, one of whom is a superior court judge, one of whom is a clerk of a superior court, one of whom is a sheriff, and one of whom is a county commissioner, shall be appointed by the Governor for terms of four years; their initial appointments, however, shall be one for a four-year term, one for a three-year term, one for a two-year term, and one for a one-year term. No individual shall serve beyond the time he or she holds the office by reason of which he or she was initially eligible for appointment.

(b) In the event of death, resignation, disqualification, or removal of any member of the board for any reason, vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term.

(c) The initial terms for all members shall begin on July 1, 2018.

(d) Membership on the board shall not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(e) The board shall elect a chairperson from among its membership and may elect such other officers and committees as it considers appropriate.

(f) Members of the board shall serve without compensation, although each member of the board shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the council. Such reimbursement shall be limited to all travel and other expenses necessarily incurred through service on the board, in compliance with this state's travel rules and regulations; provided, however, that in no case shall a member of the board be

reimbursed for expenses incurred in the member's capacity as the representative of another state agency. (Code 1981, § 35-6A-13, enacted by Ga. L. 2018, p. sb0407, § 1-6/SB 407.)

Effective date. — This Code section became effective July 1, 2018.

35-6A-14. Role of board; public access.

(a) The board shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties. Such board shall also meet upon the call of the chairperson of the board, the chairperson of the council, or the Governor;

(2) Maintain minutes of its meetings;

(3) Promulgate rules with respect to courts receiving criminal case filings electronically and the exchange of data amongst agencies and entities with respect to a criminal case from its inception to its conclusion;

(4) Participate in the development and review of this state's criminal case data exchange and management system;

(5) Using the combined expertise and experience of its members, provide regular advice and counsel to the director of the council to enable the council to carry out its statutory duties under this chapter; and

(6) Carry out such duties that may be required by federal law or regulation so as to enable this state to receive and disburse federal funds for criminal case exchange and management.

(b) Public access to data that are collected or transmitted via the criminal case information exchange shall remain the responsibility of the Georgia Crime Information Center. No release of collected data shall be made by or through the Georgia Technology Authority. (Code 1981, § 35-6A-14, enacted by Ga. L. 2018, p. 550, § 1-6/SB 407.)

Effective date. — This Code section became effective July 1, 2018.

CHAPTER 8

EMPLOYMENT AND TRAINING OF PEACE OFFICERS

Sec.
35-8-2. Definitions.
35-8-3. Establishment of Georgia Peace Officer Standards and Training Council; membership; organization; administrative assignment to Department of Public Safety.
35-8-4. Officers of council; quorum; minutes of meetings and records; reports to Governor and General Assembly.
35-8-6. Appointment of executive director of council; contracts for services; personnel; investigators; subpoenas; funding; gifts, grants, or donations.
35-8-7.1. Authority of council to refuse certificate to applicant or to discipline council certified officer or exempt officer; grounds; restoration of certificate; emergency suspension of certification; notice of investigation.
35-8-8. Requirements for appointment or certification of persons as peace officers and preemployment attendance at basic training course; "employment related information" defined.
35-8-13. Training and certification of police chaplains [Repealed].
35-8-13.1. Training and certification of municipal probation officers.
35-8-14. Board of Corrections and State Board of Pardons and Paroles to establish training program for employees authorized to make arrests [Repealed].
35-8-21. Training requirements for peace officers; waiver; exemption for retired peace officers; confirmation of training.
35-8-23. (For effective date, see note.) Basic training course for communications officers; certification requirements; duties of council; rules and regulations.
35-8-27. Training requirements for school resource officers.

Law reviews. — For article, "Symposium Protect and Serve: Perspectives on 21st Century Policing January 20, 2017: State Labor Law and Federal Police Reform," see 51 Ga. L. Rev. 1209 (2017). For article, "Symposium Protect and Serve: Perspectives on 21st Century Policing January 20, 2017: Youth/Police Encounters on Chicago's South Side: Acknowledging the Realities," see 51 Ga. L. Rev. 1079 (2017). For article, "Symposium Protect and Serve: Perspectives on 21st Century Policing January 20, 2017: Commodifying Policing: A Recipe for Community-Police Tensions," see 51 Ga. L. Rev. 1047 (2017). For article, "Symposium Protect and Serve: Perspectives on 21st Century Policing January 20, 2017: The Problematic Prosecution of an Asian American Police Officer: Notes: From a Participant in People v. Peter Liang," see 51 Ga. L. Rev. 1023 (2017). For article, "Symposium Protect and Serve: Perspectives on 21st Century Policing January 20, 2017: Keynote Address," see 51 Ga. L. Rev. 981 (2017). For article, "Missing Police Body Camera Videos: Remedies, Evidentiary Fairness, and Automatic Activation," see 52 Ga. L. Rev. 57 (2017).

35-8-1. Short title.

JUDICIAL DECISIONS

College campus police officers did not qualify for immunity. — Campus police officers employed by a private college did not qualify as a state officer or employee who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014).

Reversing reinstatement of officer on basis not raised before administrative body. — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. Ga. Peace Officer Standards and Training Council v. Hodges, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

Cited in State v. Hartsfield, 318 Ga. App. 692, 734 S.E.2d 513 (2012).

35-8-2. Definitions.

As used in this chapter, the term:

(1) "Applicant" means a prospective peace officer who has not commenced employment or service with a law enforcement unit.

(2) "Candidate" means a peace officer who, having satisfied preemployment requirements, has commenced employment with a law enforcement unit but who has not satisfied the training requirement provided for in this chapter.

(3) "Council" means the Georgia Peace Officer Standards and Training Council.

(4) "Department head" means the chief executive or head of a state department or agency, a county, a municipality, or a railroad who is a peace officer and whose responsibilities include the supervision and assignment of one or more employees or the performance of administrative and managerial duties of a police agency or law enforcement unit. Such term does not include the Attorney General, the director of the Georgia Drugs and Narcotics Agency, a district attorney, a solicitor-general, a county or municipal fire chief, or peace officers employed exclusively as investigators of any such offices who do not exercise any law enforcement supervisory or managerial duties. The provisions of this paragraph shall not apply to any sheriff or to any head of any law enforcement unit within the office of sheriff.

(4.1) "Detention facility" means a municipal or county jail used for the detention of persons charged with or convicted of a felony, a misdemeanor, or a municipal or county ordinance, but shall not include a facility customarily used to hold one or more persons for a period not to exceed eight hours while any such person awaits processing, booking, court appearance, or release.

(5) "Emergency peace officers" means any peace officers who are employed or appointed to act as peace officers during an emergency or disaster which has been so declared by the chief executive officer of the state and whose status as peace officers is intended to be temporary and for that limited purpose.

(5.1) "Jail officer" means any person who is employed or appointed by a county or a municipality and who has the responsibility of supervising inmates who are confined in a municipal or county detention facility.

(5.2) "Juvenile correctional facility" means a facility operated by the Department of Juvenile Justice and used for the detention of youth who are delinquent or who are alleged to be delinquent or a facility operated by the Department of Juvenile Justice used for the care, treatment, and rehabilitation of juvenile offenders.

(5.3) "Juvenile correctional officer" means any person employed or appointed by the Department of Juvenile Justice who has the primary responsibility for the supervision and control of youth confined in its programs and facilities.

(6) "Law enforcement support personnel" means persons, other than peace officers, whose primary employment with a law enforcement unit consists of performing functions directly related to the prevention, detection, or investigation of crime.

(7) "Law enforcement unit" means:

(A) Any agency, organ, or department of this state, a subdivision or municipality thereof, or a railroad whose primary functions include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime;

(B) The Office of Permits and Enforcement of the Department of Transportation, the Department of Juvenile Justice and its institutions and facilities for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by such department or institutions, and the office or section in the Department of Juvenile Justice in which persons are assigned who have been designated by the commissioner to investigate and apprehend delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services; and

(C) The Department of Corrections, the Department of Community Supervision, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, and county correctional institutions for the purpose of

personnel who are authorized to exercise the power of arrest and who are employed or appointed by such department, board, or institutions.

(8) "Peace officer" means, for purposes of this chapter only:

(A) An agent, operative, or officer of this state, a subdivision or municipality thereof, or a railroad who, as an employee for hire or as a volunteer, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public order, the protection of life and property, and the prevention, detection, or investigation of crime;

(B) An enforcement officer who is employed by the Department of Transportation in its Office of Permits and Enforcement and any person employed by the Department of Juvenile Justice who is designated by the commissioner to investigate and apprehend delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services;

(B.1) Personnel who are authorized to exercise the power of arrest, who are employed or appointed by the Department of Juvenile Justice, and whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, the supervision of delinquent children in the department's institutions, facilities, or programs, or the supervision of delinquent children under intensive supervision in the community;

(C) Personnel who are authorized to exercise the power of arrest and who are employed or appointed by the Department of Corrections, the Department of Community Supervision, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, county probation systems, and county correctional institutions; and

(D) An administrative investigator who is an agent, operative, investigator, or officer of this state whose duties include the prevention, detection, and investigation of violations of law and the enforcement of administrative, regulatory, licensing, or certification requirements of his or her respective employing agency.

Law enforcement support personnel are not peace officers within the meaning of this chapter, but they may be certified upon voluntarily complying with the certification provisions of this chapter.

(9) "Retired peace officer" means a retired law enforcement officer who, prior to his or her retirement from service with the state or a subdivision or municipality thereof, was a peace officer within the meaning of such term as defined in paragraph (8) of this Code section.

A retired peace officer may be certified or registered upon voluntarily complying with the certification or registration provisions of this chapter. Such term shall also mean a retired law enforcement officer who retired from service with the United States who meets all criteria as specified by the council for such classification; provided, however, that such classification shall not exempt such officer from satisfying the minimum employment and training requirements of this chapter if such officer is appointed or employed as a peace officer by the state or a subdivision or municipality thereof.

(10) "School" means any school, college, university, academy, or training program approved by the council which offers basic law enforcement training and which consists of a combination of a course curriculum, instructors, and facilities.

(10.1) "School resource officer" means a peace officer whose primary employment or assigned duties with a law enforcement unit is assignment or appointment to a public elementary school or secondary school.

(11) "Speed detection device" means that particular device designed to measure the speed or velocity of a motor vehicle and marketed under the name "Vascar," any device designed to measure the speed or velocity of motor vehicles using the Doppler principle of radio detection and ranging and commonly marketed under the name "radar," or any similar device, including but not limited to laser, operating under the same or similar principle, which device is approved by the Department of Public Safety for the measurement of speed, including any device for the measurement of speed or velocity based upon the Doppler principle of radar or speed timing principle of laser. (Ga. L. 1970, p. 208, §§ 2, 14; Ga. L. 1975, p. 1165, §§ 2, 3, 10; Ga. L. 1976, p. 395, §§ 1-5; Ga. L. 1978, p. 992, §§ 1, 2; Ga. L. 1978, p. 2299, § 1; Ga. L. 1980, p. 979, § 1; Ga. L. 1981, p. 778, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 2478, §§ 1, 2, 5, 6; Ga. L. 1985, p. 283, § 1; Ga. L. 1987, p. 1141, § 1; Ga. L. 1989, p. 568, § 1; Ga. L. 1993, p. 91, § 35; Ga. L. 1993, p. 966, §§ 1, 2; Ga. L. 1995, p. 880, § 1; Ga. L. 1995, p. 1238, § 1; Ga. L. 1996, p. 1281, § 1; Ga. L. 1997, p. 582, §§ 1, 2; Ga. L. 1997, p. 1453, § 1; Ga. L. 1997, p. 1488, §§ 2A, 2B, 7A, 7B; Ga. L. 1998, p. 128, § 35; Ga. L. 1998, p. 224, § 2; Ga. L. 1999, p. 777, §§ 2, 3; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2013, p. 294, § 4-45/HB 242; Ga. L. 2014, p. 382, § 1/SB 324; Ga. L. 2015, p. 422, § 5-56/HB 310; Ga. L. 2017, p. 673, § 1-1/SB 149.)

The 2013 amendment, effective January 1, 2014, in subparagraphs (7)(B) and (8)(B), substituted "delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services" for "unruly and delinquent children"; substituted "such department" for "said department" near the middle of subparagraph (7)(B); and deleted "and unruly" following "delinquent" near the end of subparagraph (8)(B.1). See Editor's notes for applicability.

The 2014 amendment, effective July 1, 2014, deleted "or" following "of crime," and "added , or the supervision of delinquent children under intensive supervision in the community" to the end of subparagraph (8)(B.1).

The 2015 amendment, effective July 1, 2015, inserted "the Department of Community Supervision," near the beginning of subparagraphs (7)(C) and (8)(C), and substituted "such department" for "said department" near the end of subparagraph (7)(C). See Editor's notes for applicability.

The 2017 amendment, effective July 1, 2017, added paragraph (10.1).

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

JUDICIAL DECISIONS

Court lacked subject matter jurisdiction. — Trial court erred by entering a default judgment against a police officer for failing to timely answer because the officer was immune from suit on the claim brought under state law, thus, the default judgment entered on that claim was a nullity and the trial court lacked subject matter jurisdiction and should have dismissed the state law cause of action for lack of subject matter jurisdiction. Ferrell v. Young, 323 Ga. App. 338, 746 S.E.2d 167 (2013).

Discretionary authority. — With respect to law enforcement officers claiming qualified immunity in a case alleging that certain searches violated Fourth Amendment rights, the officers could show that the officers were acting within the officers' discretionary authority because it is clear that performing searches and assisting in arrests are legitimate job-related functions within the power of law enforcement bodies under O.C.G.A. § 35-8-2(8)(A). Mehta v. Foskey, 877 F. Supp. 2d 1367 (S.D. Ga. 2012).

35-8-3. Establishment of Georgia Peace Officer Standards and Training Council; membership; organization; administrative assignment to Department of Public Safety.

(a) The Georgia Peace Officer Standards and Training Council is established. The council shall consist of 22 voting members and five advisory members.

(b) The voting members shall consist of:

(1) An appointee of the Governor who is not the Attorney General, the commissioner of public safety or his or her designee, the director of investigation of the Georgia Bureau of Investigation or his or her designee, the president of the Georgia Association of Chiefs of Police or his or her designee, the president of the Georgia Sheriffs Association or his or her designee, the president of the Georgia Municipal

Association or his or her designee, the president of the Association County Commissioners of Georgia or his or her designee, the president of the Peace Officers' Association of Georgia or his or her designee, the commissioner of corrections or his or her designee, the commissioner of community supervision or his or her designee, the chairperson of the State Board of Pardons and Paroles or his or her designee, the president of the Georgia Prison Wardens Association or his or her designee, the commissioner of juvenile justice or his or her designee, and the commissioner of natural resources or his or her designee, who shall be ex officio members of the council;

(2) Six members who shall be appointed by the Governor for terms of four years, their initial appointments, however, being two for four-year terms, two for three-year terms, and two for two-year terms. Appointments shall be made so that there are always on the council the following persons who are appointed by the Governor: one chief of police; two municipal police officers other than a chief of police; one county sheriff; one city manager or mayor; and one county commissioner. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment. Vacancies shall be filled in the same manner as the original appointment, and successors shall serve for the unexpired term. Any member may be appointed for additional terms; and

(3) Two members who are peace officers and who shall be appointed by the Governor for terms of four years. Neither person shall serve beyond the time he or she is actively employed or serves as a peace officer. Vacancies shall be filled in the same manner as the original appointment, and successors shall serve for the unexpired term.

(c) Five advisory members shall be appointed by the council to serve on the council in an advisory capacity only without voting privileges.

(d) Membership on the council does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(e) The council is assigned to the Department of Public Safety for administrative purposes only, as prescribed in Code Section 50-4-3. (Ga. L. 1970, p. 208, § 3; Ga. L. 1972, p. 866, § 1; Ga. L. 1972, p. 1015, § 1606; Ga. L. 1975, p. 1165, § 1; Ga. L. 1976, p. 395, § 6; Ga. L. 1976, p. 1684, §§ 1, 2; Ga. L. 1977, p. 717, §§ 2-4; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 2478, §§ 3, 7, 8; Ga. L. 1983, p. 3, § 26; Ga. L. 1985, p. 283, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1997, p. 1488, § 3; Ga. L. 2015, p. 422, § 5-57/HB 310; Ga. L. 2016, p. 247, § 1/SB 279.)

The 2015 amendment, effective July 1, 2015, substituted "20 voting members" for "19 voting members" near the end of subsection (a); and inserted "the commissioner of community supervision or his or her designee," near the end of paragraph (b)(1). See Editor's notes for applicability.

The 2016 amendment, effective July 1, 2016, substituted "22 voting members" for "20 voting members" in subsection (a); in paragraph (b)(1), substituted "the president of the Georgia Prison Wardens Association or his or her designee, the commissioner of juvenile justice or his or her designee, and the commissioner of natural resources or his or her designee, who shall" for "and the president of the Georgia Prison Wardens Association or his or her designee, who shall" near the end; inserted a comma following "appointment" in the next-to-last sentence of paragraph (b)(2) and in the last sentence of paragraph (b)(3); and inserted a comma following the first occurrence of "public office" in subsection (d).

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

35-8-4. Officers of council; quorum; minutes of meetings and records; reports to Governor and General Assembly.

The business of the council shall be conducted in the following manner:

(1) The officers of the council, who shall consist of a chairperson, vice chairperson, and secretary-treasurer, shall be elected at the first meeting of each calendar year.

(2) Eleven members of the council shall constitute a quorum for the transaction of business.

(3) The council shall maintain minutes of its meetings and such other records as it deems necessary.

(4) The council shall report at least annually to the Governor and to the General Assembly as to its activities. (Ga. L. 1970, p. 208, § 4; Ga. L. 2018, p. 336, § 1/HB 867.)

The 2018 amendment, effective July 1, 2018, substituted "chairperson, vice chairperson" for "chairman, vice-chairman" in paragraph (1); and substituted "Eleven" for "Seven" at the beginning of paragraph (2).

35-8-6. Appointment of executive director of council; contracts for services; personnel; investigators; subpoenas; funding; gifts, grants, or donations.

(a) The council may appoint an executive director who shall serve at the pleasure of the council. The council shall establish the compensation for the executive director.

(b) The executive director may contract for such services as may be necessary and authorized in order to carry out the provisions of this

chapter and may employ such other professional, technical, and clerical personnel deemed necessary to carry out the purposes of this chapter.

(c) The executive director is authorized to appoint certain investigators for the purpose of carrying out the provisions of this chapter. The executive director and persons so appointed shall meet all employment and training requirements of this chapter as for all other peace officers and shall have all of the powers of other peace officers. Any investigator of the council shall have access to and may examine any writing, document, or other material which is deemed by the chairperson of the council to be related to the fitness of any peace officer or applicant to practice as a peace officer. The chairperson or executive director of the council may issue subpoenas to compel such access. When a subpoena is disobeyed, the council may apply to the superior court of the county where the person to whom the subpoena is issued resides for an order requiring obedience. Failure to comply with such order shall be punishable as for contempt of court.

(d) Investigators provided for under subsection (c) of this Code section may retain their weapon and badge upon retirement pursuant to the requirements and procedures provided for under Code Section 35-1-20.

(e) The funds necessary to carry out this chapter shall come from the funds appropriated to and available to the council and from any other available funds.

(f) The council is authorized to accept and use gifts, grants, donations, property, both real and personal, and services for the purpose of carrying out this chapter.

(g) Any funds, property, or services received as gifts, grants, or donations shall be kept separate and apart from any funds appropriated to the council; and the funds, property, or services so received by gifts, grants, or donations shall be the property and funds of the council and, as such, shall not lapse at the end of each fiscal year but shall remain under the control of and subject to the direction of the council for carrying out this chapter. (Ga. L. 1970, p. 208, § 7; Ga. L. 1975, p. 1165, § 5; Ga. L. 1988, p. 483, § 1; Ga. L. 1989, p. 514, § 1; Ga. L. 2018, p. 336, § 2/HB 867.)

The 2018 amendment, effective July 1, 2018, substituted "chairperson" for "chairman" in the third and fourth sentences of subsection (c); added subsection (d); and redesignated former subsections (d) through (f) as present subsections (e) through (g), respectively.

35-8-7. Powers and duties of council generally.

JUDICIAL DECISIONS

Cited in State v. Hartsfield, 318 Ga. App. 692, 734 S.E.2d 513 (2012).

35-8-7.1. Authority of council to refuse certificate to applicant or to discipline council certified officer or exempt officer; grounds; restoration of certificate; emergency suspension of certification; notice of investigation.

(a) The council shall have authority to refuse to grant a certificate to an applicant or to discipline a council certified officer or exempt officer under this chapter or any antecedent law upon a determination by the council that the applicant, council certified officer, or exempt officer has:

(1) Failed to demonstrate the qualifications or standards for a certificate provided in this chapter or in the rules and regulations of the council. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the council that he or she meets all requirements for the issuance of a certificate;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of being an officer or in any document connected therewith or practiced fraud or deceit or intentionally made any false statement in obtaining a certificate to practice as an officer;

(3) Been convicted of a felony in the courts of this state or any other state, territory, country, or of the United States. As used in this paragraph, the term "conviction of a felony" shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or a verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon. However, the council may not deny a certificate to an applicant with a conviction if the adjudication of guilt or sentence is withheld or not entered thereon;

(4) Committed a crime involving moral turpitude, without regard to conviction. The conviction of a crime involving moral turpitude shall be conclusive of the commission of such crime. As used in this paragraph, the term "conviction" shall have the meaning prescribed in paragraph (3) of this subsection;

(5) Had his or her certificate or license to practice as an officer revoked, suspended, or annulled by any lawful certifying or licensing authority; had other disciplinary action taken against him or her by

any lawful certifying or licensing authority; or was denied a certificate or license by any lawful certifying or licensing authority;

(6) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public; such conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of an officer;

(7) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the council, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, so long as such law, rule, or regulation relates to or in part regulates the practice of an officer;

(8) Committed any act or omission which is indicative of bad moral character or untrustworthiness;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction, within or outside this state;

(10) Become unable to perform as an officer with reasonable skill and safety to citizens by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition; or

(11) Been suspended or discharged by the officer's employing law enforcement unit for disciplinary reasons.

(b)(1) When the council finds that any person is unqualified to be granted a certificate or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the council may take any one or more of the following actions:

(A) Refuse to grant a certificate to an applicant;

(B) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the officer;

(C) Suspend any certificate for a definite period;

(D) Limit or restrict any certificate;

(E) Revoke any certificate; or

(F) Condition the penalty, or withhold formal disposition, upon the officer's completing such care, counseling, or treatment, as directed by the council.

(2) In addition to and in conjunction with the foregoing actions, the council may make a finding adverse to the applicant or officer but

withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the officer on probation, which may be vacated upon noncompliance with such reasonable terms as the council may impose.

(c) In its discretion, the council may restore and reissue a certificate issued under this chapter or any antecedent law to an officer and, as a condition thereof, may impose any disciplinary or corrective measure provided in this chapter.

(d) Upon arrest or indictment of an officer for any crime which is punishable as a felony, the executive director of the council shall order the emergency suspension of such officer's certification upon the executive director's determination that the suspension is in the best interest of the health, safety, or welfare of the public. The order of emergency suspension shall be made in writing and shall specify the basis for the executive director's determination. Following the issuance of an emergency suspension order, proceedings of the council in the exercise of its authority to discipline any officer shall be promptly scheduled as provided for in Code Section 35-8-7.2. The emergency suspension order of the executive director shall continue in effect until issuance of the final decision of the council or such order is withdrawn by the executive director.

(e) Upon initiating an investigation of an officer for possible disciplinary action or upon disciplining an officer pursuant to this Code section, the council shall notify the head of the law enforcement agency that employs such officer of the investigation or disciplinary action. In the case of an investigation, it shall be sufficient to identify the officer and state that a disciplinary investigation has been opened. Notice of the initiation of an investigation shall be sent by priority mail. If the investigation is completed without any further action, notice of the termination of such investigation shall also be provided to the head of the employing agency. In the case of disciplinary action, the notice shall identify the officer and state the nature of the disciplinary action taken. The notice of disposition shall be sent only after the action of the council is deemed final. Such notice shall be sent by priority mail.

(f) If the certification of an officer is suspended or revoked by either the executive director or council, then the council shall notify the head of the law enforcement agency that employs the officer; the district attorney of the judicial circuit in which such law enforcement agency is located; and the solicitor of the state court, if any, of the county in which such law enforcement agency is located. It shall be sufficient for this notice to identify the officer and state the length of time, if known, that the officer will not have powers of arrest. Such notice shall be sent by priority mail. (Code 1981, § 35-8-7.1, enacted by Ga. L. 1985, p. 539, § 2; Ga. L. 1987, p. 3, § 35; Ga. L. 1993, p. 91, § 35; Ga. L. 2008, p. 237,

§ 1/SB 373; Ga. L. 2011, p. 506, § 1/HB 203; Ga. L. 2013, p. 864, § 1/HB 366.)

The 2013 amendment, effective July 1, 2013, throughout this Code section, substituted "an officer" for "a peace officer", deleted "peace" preceding "officer", and deleted "peace" preceding "officer's"; in the introductory paragraph of subsection (a), substituted "council certified officer or exempt officer" for "certified peace officer or exempt peace officer" near the middle, and substituted "applicant, council certified officer, or exempt officer" for "applicant or certified peace officer or exempt peace officer" near the end; inserted "or she" in the second sentence of paragraph (a)(1); in paragraph (a)(5), inserted "or her" twice, and deleted "or" preceding "had other disciplinary"; substituted "public; such conduct" for "public, which conduct" in the first sentence of paragraph (a)(6); substituted "punishable, so long as such law" for "punishable, which law" in paragraph (a)(7); and deleted "probation" preceding "may be vacated" near the middle of paragraph (b)(2).

35-8-7.2. Administrative procedure; hearings; review.

JUDICIAL DECISIONS

Reversing agency decision on ground not raised before agency. — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. Ga. Peace Officer Standards and Training Council v. Hodges, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

35-8-8. Requirements for appointment or certification of persons as peace officers and preemployment attendance at basic training course; "employment related information" defined.

(a) Any person employed or certified as a peace officer shall:

(1) Be at least 18 years of age;

(2) Be a citizen of the United States;

(3) Have a high school diploma or its recognized equivalent;

(4) Not have been convicted by any state or by the federal government of any crime the punishment for which could have been imprisonment in the federal or state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for the purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered;

(5) Be fingerprinted for the purpose of conducting a fingerprint based search at the Georgia Bureau of Investigation and the Federal

Bureau of Investigation to determine the existence of any criminal record;

(6) Possess good moral character as determined by investigation under procedure established by the council and fully cooperate during the course of such investigation;

(7) Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which might adversely affect his or her exercise of the powers or duties of a peace officer; and

(8) Successfully complete a job related academy entrance examination provided for and administered by the council in conformity with state and federal law. Such examination shall be administered prior to entrance to the basic course provided for in Code Sections 35-8-9 and 35-8-11. The council may change or modify such examination and shall establish the criteria for determining satisfactory performance on such examination. The provisions of this paragraph establish only the minimum requirements of academy entrance examinations for peace officer candidates in this state; each law enforcement unit is encouraged to provide such additional requirements and any preemployment examination as it deems necessary and appropriate. Any person with a degree from a postsecondary institution accredited by a regional accrediting agency recognized by the United States Department of Education shall be deemed to have met the requirements of this paragraph.

(b) Any person authorized to attend the basic training course prior to employment as a peace officer shall meet the requirements of subsection (a) of this Code section.

(c)(1) For purposes of this subsection, the term "employment related information" means written information contained in a prior employer's records or personnel files that relates to an applicant's, candidate's, or peace officer's performance or behavior while employed by such prior employer, including performance evaluations, records of disciplinary actions, and eligibility for rehire. Such term shall not include information prohibited from disclosure by federal law or any document not in the possession of the employer at the time a request for such information is received.

(2) Where an investigation is conducted for the purpose of hiring, certifying, or continuing the certification of a peace officer, an employer shall disclose employment related information to the investigating law enforcement agency upon receiving a written request from such agency. Disclosure shall only be required under this subsection if the law enforcement agency's request is accompanied by a copy of a signed, notarized statement from the applicant, candidate,

or peace officer releasing and holding harmless such employer from any and all liability for disclosing complete and accurate information to the law enforcement agency.

(3) An employer may charge a reasonable fee to cover actual costs incurred in copying and furnishing documents to a requesting law enforcement agency, including retrieving and redacting costs, provided such amount shall not exceed $25.00 or 25¢ per page, whichever is greater. No employer shall be required to prepare or create any document not already in the employer's possession at the time a request for employment related information is received. Any employment related information provided pursuant to this subsection that is not subject to public disclosure while in the possession of a prior employer shall continue to be privileged and protected from public disclosure as a record of the requesting law enforcement agency.

(4) No employer or law enforcement agency shall be subject to any civil liability for any cause of action by virtue of disclosing complete and accurate information to a law enforcement agency in good faith and without malice pursuant to this subsection. In any such cause of action, malice or bad faith shall only be demonstrated by clear and convincing evidence. Nothing contained in this subsection shall be construed so as to affect or limit rights or remedies provided by federal law.

(5) Before taking final action on an application for employment based, in whole or in part, on any unfavorable employment related information received from a previous employer, a law enforcement agency shall inform the applicant, candidate, or peace officer that it has received such employment related information and that the applicant, candidate, or peace officer may inspect and respond in writing to such information. Upon the applicant's, candidate's, or peace officer's request, the law enforcement agency shall allow him or her to inspect the employment related information and to submit a written response to such information. The request for inspection shall be made within five business days from the date that the applicant, candidate, or peace officer is notified of the law enforcement agency's receipt of such employment related information. The inspection shall occur not later than ten business days after said notification. Any response to the employment related information shall be made by the applicant, candidate, or peace officer not later than three business days after his or her inspection.

(6) Nothing contained in this Code section shall be construed so as to require any person to provide self-incriminating information or otherwise to compel any person to act in violation of his or her right guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section I, Paragraph XVI of the Georgia Constitu-

tion. It shall not be a violation of this Code section for a person to fail to provide requested information based on a claim that such information is self-incriminating provided that notice of such claim is served in lieu of the requested information. An action against such person to require disclosure on the grounds that the claim of self-incrimination is not substantiated may be brought in the superior court of the county of such party's residence or where such information is located. (Ga. L. 1970, p. 208, § 8; Ga. L. 1973, p. 539, § 1; Ga. L. 1976, p. 1563, § 1; Ga. L. 1976, p. 1684, §§ 3, 4; Ga. L. 1977, p. 712, § 1; Ga. L. 1977, p. 1180, §§ 1, 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35; Ga. L. 2004, p. 986, § 2; Ga. L. 2008, p. 237, § 2/SB 373; Ga. L. 2011, p. 545, § 1/SB 95; Ga. L. 2013, p. 864, § 2/HB 366; Ga. L. 2017, p. 774, § 35/HB 323; Ga. L. 2018, p. 336, § 3/HB 867.)

The 2013 amendment, effective July 1, 2013, substituted "30 days" for "six months" in the fourth sentence of paragraph (a)(8).

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (c)(3).

The 2018 amendment, effective July 1, 2018, in paragraph (a)(8), deleted the former fourth sentence, which read: "Peace officers who do not perform satisfactorily on the examination shall be ineligible to retake such examination for a period of 30 days after an unsuccessful attempt.", and added the last sentence.

35-8-10. Applicability and effect of certification requirements generally; requirements as to exempt persons.

JUDICIAL DECISIONS

No twelve month gap in employment of deputy. — When a deputy arrested a person for being drunk at a high school football game, the deputy was entitled to qualified immunity as to the arrestee's excessive force claim because, inter alia, the deputy was certified under Georgia law, and thus, the requirement that registered peace officers not have more than a 12-month gap between positions in law enforcement was inapplicable to the deputy. Collins v. Ensley, 498 Fed. Appx. 908 (11th Cir. 2012) (Unpublished).

35-8-13. Training and certification of police chaplains.

Reserved. Repealed by Ga. L. 2018, p. 336, § 4/HB 867, effective July 1, 2018.

Editor's notes. — This Code section was based on Ga. L. 1980, p. 1127, § 1; Ga. L. 1991, p. 94, § 35.

35-8-13.1. Training and certification of municipal probation officers.

(a) Any person employed or appointed as a municipal probation officer on or after July 1, 2017, shall not be authorized to exercise the power of arrest as a municipal probation officer unless such person has successfully completed a training course and received certification for municipal probation officers approved by the Georgia Peace Officer Standards and Training Council; provided, however, that such person shall only exercise the power of arrest upon individuals whom he or she is supervising under Article 6 of Chapter 8 of Title 42, unless such person is certified as a peace officer by the Georgia Peace Officer Standards and Training Council.

(b) Persons applying for certification and persons certified by the council under this Code section shall be subject to the powers and authority of the Georgia Peace Officer Standards and Training Council applicable to peace officers as defined in this chapter and shall be required to fulfill all of the requirements of a peace officer, except peace officer training requirements applicable to peace officers only. Such persons shall be required to register with the council. Such registration shall remain in effect for the period of time such person is employed as a municipal probation officer.

(c) Any person who registers with the council pursuant to this Code section shall not have such registration invalidated upon termination of employment or appointment as a municipal probation officer if subsequent employment or appointment as a municipal probation officer is commenced within 12 months of such prior termination of employment or appointment as a municipal probation officer.

(d) Any municipal probation officer exempted from mandatory compliance with this Code section may choose to be certified under this Code section. If so, the council shall have the authority to recognize instruction received by such municipal probation officer as equivalent to all or part of the instruction required for certification under this Code section.

(e) The term "municipal probation officer" as used in this Code section means only municipal probation officers employed directly by a municipality or consolidated government and shall not include employees of private probation providers which contract with municipalities or consolidated governments in accordance with the provisions of Article 6 of Chapter 8 of Title 42; provided, however, that the term "municipal probation officer" shall not include probation officers of any municipal corporation which conducts a training course for such officers if such training course is approved by the Georgia Peace Officer Standards and Training Council.

(f) Any person who has completed the peace officer basic training course and is certified as a peace officer by the Georgia Peace Officer Standards and Training Council may serve as a municipal probation officer without obtaining the municipal probation officer training and certification required by this Code section. (Code 1981, § 35-8-13.1, enacted by Ga. L. 1998, p. 192, § 1; Ga. L. 2017, p. 673, § 2-1/SB 149.)

The 2017 amendment, effective July 1, 2017, in subsection (a), near the beginning, substituted "July 1, 2017," for "January 1, 1999", substituted "exercise the power of arrest" for "serve", and added the proviso at the end.

35-8-14. Board of Corrections and State Board of Pardons and Paroles to establish training program for employees authorized to make arrests.

Reserved. Repealed by Ga. L. 1982, p. 2478, § 9, effective November 1, 1982.

Editor's notes. — Ga. L. 2013, p. 141, § 35/HB 79, effective April 24, 2013, reserved the designation of this Code section.

35-8-15. Preparation and maintenance of employment records by law enforcement units and council; release of records.

JUDICIAL DECISIONS

Agreement in violation of section void.

County was statutorily required to maintain duplicate personnel records for a police officer who worked for the county school system and to forward a copy of the records to the Georgia Peace Officer Standards and Training Council, and the county was required by regulation to inform the Council when the officer resigned in lieu of termination; dismissal of the officer's claim for breach of an alleged contract requiring the county to report only that the officer resigned was proper. Flowers v. Fulton Cnty. Sch. Sys., 654 Fed. Appx. 396 (11th Cir. 2016) (Unpublished).

35-8-21. Training requirements for peace officers; waiver; exemption for retired peace officers; confirmation of training.

(a) During calendar year 1999 and during each calendar year thereafter, any person employed or appointed as a peace officer shall complete 20 hours of training as provided in this Code section; provided, however, that any peace officer serving with the Department of Public Safety who is a commissioned officer shall receive annual training as specified by the commissioner of public safety.

(b) The training required by subsection (a) of this Code section shall be completed in sessions approved or recognized by the Georgia Peace Officer Standards and Training Council.

(c) Peace officers who satisfactorily complete the basic course of training in accordance with the provisions of this chapter shall be excused from the minimum annual training requirement for the calendar year during which the basic course is completed.

(d) Any peace officer who does not fulfill the training requirements of this Code section shall lose his or her power of arrest.

(e) A waiver of the requirement of training provided in this Code section may be granted by the Georgia Peace Officer Standards and Training Council, in its discretion, upon the presentation of evidence by a peace officer that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(f) Any person who is registered or certified with the council as a retired peace officer is excused and exempt from compliance with this Code section for the year in which he or she retires. A retired peace officer may voluntarily comply with the requirements of this Code section and, in that event, such retired peace officer shall receive such minimal annual training without payment of any fees or costs, but only if sufficient class space is available. Nothing in this subsection shall be deemed to grant an exemption to persons required to complete the annual training requirement of this Code section.

(g) Any person required to comply with this Code section shall provide confirmation of his or her training for the previous year to the council in a manner required by the council. Failure to provide the council with confirmation of training in a timely manner or failure to obtain required training in a timely manner shall result in an emergency suspension of the officer's certification by the executive director. The order of emergency suspension issued by the executive director shall be made in writing and shall specify the basis for the determination. The emergency suspension order shall continue in effect until the training requirements are confirmed or a waiver is issued pursuant to subsection (e) of this Code section. An emergency suspension issued pursuant to this subsection shall be automatically withdrawn upon confirmation of required training or the issuance of a waiver by the council. (Code 1981, § 35-8-21, enacted by Ga. L. 1988, p. 1063, § 1; Ga. L. 1999, p. 777, § 5; Ga. L. 2004, p. 986, § 2A; Ga. L. 2013, p. 864, § 3/HB 366.)

The 2013 amendment, effective July 1, 2013, deleted "after April 1 in any calendar year" following "chapter" in the middle of subsection (c); inserted "or her" in subsection (d); inserted "or she" near the middle of subsection (e); added "for the year in which he or she retires" at the end of the first sentence of subsection (f); and added subsection (g).

35-8-23. (For effective date, see note.) Basic training course for communications officers; certification requirements; duties of council; rules and regulations.

(a) As used in this Code section, the term "communications officer" means and includes any person employed by the state or a local governmental agency to receive, process, or transmit public safety information and dispatch law enforcement officers, firefighters, medical personnel, or emergency management personnel.

(b) Any person employed on or after July 1, 1995, as a communications officer shall satisfactorily complete a basic training course approved by the council. Persons who are employed on July 1, 1994, shall register with the council and may be certified by voluntarily complying with the certification process. Any person who fails to comply with the registration or certification process of the council shall not perform any duties of a communications officer and may have his or her certificate sanctioned or revoked.

(c) (For effective date, see note.) The council shall conduct administrative compliance reviews with respect to the requirements of this Code section. The council, in coordination with the Georgia Emergency Communications Authority, shall be authorized to promulgate rules and regulations to facilitate the administration and coordination of standards, certification, and compliance reviews consistent with the provisions of this Code section.

(d) On and after July 1, 1998, the basic training course for communications officers shall include training in the use of telecommunications devices for the deaf (TDD's), and no person shall on or after that date be certified by the council under this Code section unless such person has satisfactorily completed such training. (Code 1981, § 35-8-23, enacted by Ga. L. 1994, p. 1355, § 2.1; Ga. L. 1997, p. 1488, § 7; Ga. L. 1998, p. 540, § 1; Ga. L. 2018, p. 689, § 3-1/HB 751.)

Delayed effective date. — Subsections (a) and (c), as set out above, become effective January 1, 2019. For version of subsections (a) and (c) in effect until January 1, 2019, see the 2018 amendment note.

The 2018 amendment, effective January 1, 2019, inserted "the state or" in the middle of subsection (a); and inserted ", in coordination with the Georgia Emergency Communications Authority," near the beginning of the second sentence of subsection (c). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2018, p. 689, § 4-1(b)/HB 751, not codified by the General Assembly, provides that: "(b) The provisions of this Act shall not in any manner diminish, extinguish, reduce, or affect any cause of action for audits, services, or the recovery of funds from service providers which may have existed prior to January 1, 2019. Any such cause of action is expressly preserved."

35-8-26. (For effective date, see note.) TASER and electronic control weapons; requirements for use; establishment of policies; training.

Delayed effective date. — Ga. L. 2006, p. 666, § 2, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 2007, excepting that provisions applying to council certification and provisions for training offered by the Georgia Public Safety Training Center shall become effective six months after the effective date of an appropriations Act containing a specific appropriation to fund certification by the council and training by the center." Funds were not appropriated at the 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018 sessions of the General Assembly.

RESEARCH REFERENCES

ALR. — Liability of manufacturer for injuries arising from use of, or failure to use, stun gun or taser device, 56 A.L.R. 6th 467.

35-8-27. Training requirements for school resource officers.

(a) It is the best practice for any person assigned or appointed as a school resource officer to successfully complete a training course for school resource officers approved by the council.

(b) For purposes of subsection (a) of this Code section, the council shall maintain a training course consisting of 40 hours of training for school resource officers. Such training course shall, at a minimum, provide training in the role of a peace officer assigned to an elementary or secondary school, search and seizure in elementary and secondary schools, criminal offenses, gang awareness, drug awareness, interviews and interrogations, emergency preparedness, and interpersonal interactions with adolescents, including the encountering of mental health issues. (Code 1981, § 35-8-27, enacted by Ga. L. 2017, p. 673, § 1-2/SB 149.)

Effective date. — This Code section became effective July 1, 2017.

TITLE 36

LOCAL GOVERNMENT

Provisions Applicable to Counties Only

Chap.

1. General Provisions, 36-1-1 through 36-1-27.
5. Organization of County Government, 36-5-1 through 36-5-29.
9. County Property Generally, 36-9-1 through 36-9-11.
12. Supervision and Support of Paupers, 36-12-1 through 36-12-5.
15. County Law Library, 36-15-1 through 36-15-13.

Provisions Applicable to Municipal Corporations Only

30. General Provisions, 36-30-1 through 36-30-13.
31. Incorporation of Municipal Corporations, 36-31-1 through 36-31-12.
32. Municipal Courts, 36-32-1 through 36-32-41.
33. Liability of Municipal Corporations for Acts or Omissions, 36-33-1 through 36-33-6.
35. Home Rule Powers, 36-35-1 through 36-35-8.
36. Annexation of Territory, 36-36-1 through 36-36-119.
37. Acquisition and Disposition of Real and Personal Property Generally, 36-37-1 through 36-37-10.
42. Downtown Development Authorities, 36-42-1 through 36-42-17.
44. Redevelopment Powers, 36-44-1 through 36-44-23.

Provisions Applicable to Counties and Municipal Corporations

60. General Provisions, 36-60-1 through 36-60-26.
61. Urban Redevelopment, 36-61-1 through 36-61-19.
62. Development Authorities, 36-62-1 through 36-62-14.
66B. Mobile Broadband Infrastructure Leads to Development, 36-66B-1 through 36-66B-7.

69. Mutual Aid, 36-69-1 through 36-69-10.

70. Coordinated and Comprehensive Planning and Service Delivery by Counties and Municipalities, 36-70-1 through 36-70-28.

76. Expedited Franchising of Cable and Video Services, 36-76-1 through 36-76-11.

Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities

80. General Provisions, 36-80-1 through 36-80-27.

81. Budgets and Audits, 36-81-1 through 36-81-20.

82. Bonds, 36-82-1 through 36-82-256.

83. Local Government Investment Pool, 36-83-1 through 36-83-8.

85. Interlocal Risk Management Agencies, 36-85-1 through 36-85-20.

87. Participation in Federal Programs, 36-87-1 through 36-87-2.

88. Enterprise Zones, 36-88-1 through 36-88-10.

91. Public Works Bidding, 36-91-1 through 36-91-119.

Provisions Applicable to Counties Only

CHAPTER 1

GENERAL PROVISIONS

Sec.
36-1-27. Referendum approval required prior to expenditure of public funds for establishment of fixed guideway transit; definitions; submission of the question to qualified voters; ballot language.

36-1-1. Names of counties.

JUDICIAL DECISIONS

Cited in Ga. Reg'l Transp. Auth. v. Foster, 329 Ga. App. 258, 764 S.E.2d 862 (2014).

36-1-3. County a body corporate; power to sue and be sued generally.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Applicability of sovereign immunity in action between city and county. — In a suit by a city against a county, seeking a portion of tax revenue raised by the county from alcoholic beverage sales, there was a threshold question of whether sovereign immunity applied in suits between political subdivisions of the same sovereign (such as the city and the county), which the trial court had not addressed; therefore, remand was required. Clayton County v. City of College Park, 301 Ga. 653, 803 S.E.2d 63 (2017).

36-1-4. When county liable to be sued.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Applicability of sovereign immunity in suit between county and city. — In a suit by a city against a county, seeking a portion of tax revenue raised by the county from alcoholic beverage sales, there was a threshold question of whether sovereign immunity applied in suits between political subdivisions of the same sovereign (such as the city and the county), which the trial court had not

addressed; therefore, remand was required. Clayton County v. City of College Park, 301 Ga. 653, 803 S.E.2d 63 (2017).

Extent of immunity.

Sovereign immunity barred the plaintiff's claims against the defendant county because, under O.C.G.A. § 36-1-4, a county was not liable to suit for any cause of action unless made so by statute, and the county's sovereign immunity had not been waived with respect to the claims asserted by the plaintiff. McRae v. Perry, No. 211-193, 2012 U.S. Dist. LEXIS 169081 (S.D. Ga. Nov. 28, 2012).

Medical care for inmates. — Trial court correctly determined that the state law claims made against a county and against a sheriff and medical contract compliance administrator in their official capacities were barred because, although O.C.G.A. § 42-5-2(a) imposed upon the county the duty and cost of medical care for inmates in the county's custody, it did not waive sovereign immunity of the county or the county's agents or employees. Graham v. Cobb County, 316 Ga. App. 738, 730 S.E.2d 439 (2012).

County's immunity regarding tax sale. — Pursuant to O.C.G.A. § 36-1-4 and Ga. Const. 1983, Art. I, Sec. II, Para. IX (e), a county was immune from a lender's suit because the lender pointed to no statute creating a waiver of immunity or any factual scenario warranting a waiver with respect to the lender's claim that the county failed to give it notice of the availability of excess funds following a tax sale as required by O.C.G.A. § 48-4-5. Bartow County v. S. Dev., III, L.P., 325 Ga. App. 879, 756 S.E.2d 11 (2014).

36-1-21. Civil service system for county employees.

JUDICIAL DECISIONS

Political patronage of sheriff deputies. — Deputy sheriff's First Amendment political patronage claim failed because political loyalty was an appropriate requirement for the position of deputy sheriff as Georgia deputies had the same powers and duties as the sheriff; the civil service system, which prohibited the sheriff from making employment decisions on the basis of political affiliation, did not modify the duties of the sheriff's deputies and therefore had no effect on the First Amendment claim. Ezell v. Wynn, 802 F.3d 1217 (11th Cir. 2015).

No vested interest in continued employment shown. — In a racial discrimination suit, the trial court properly denied mandamus relief to the former employee because the former employee failed to show that the employer had a clear legal duty to maintain the former employee as an employee and there was no evidence showing that the former employee was ever a merit system employee with a vested interest in continued employment with the tax commissioner. Cochran v. Kendrick, 297 Ga. 655, 778 S.E.2d 1 (2015).

36-1-27. Referendum approval required prior to expenditure of public funds for establishment of fixed guideway transit; definitions; submission of the question to qualified voters; ballot language.

(a) As used in this Code section, the term:

(1) "Expenditure of public funds" means:

(A) Utilizing the proceeds of any tax, proceeds from the county general fund, or any other county proceeds;

(B) Incurring general obligation debt, revenue debt, or other multiyear obligations; or

(C) Entering into any intergovernmental agreement with an authority or instrumentality of the state which would impact future tax revenue or obligate the payment of tax revenue, general obligation debt, revenue debt, or other multiyear obligations.

(2) "Fixed guideway transit" means a public transportation system using and occupying a permanent, separate right of way for the exclusive use of public transportation, including, but not limited to, rails for use by trains or a bus rapid transit system.

(3) "Mass transportation" means any mode of transportation serving the general public which is appropriate to transport people by highways or rail.

(4) "Mass transportation regional system participant" means any county within a special district created pursuant to Article 5 of Chapter 8 of Title 48 in which mass transportation is provided within such special district, to such special district, or from such special district by a multicounty regional transportation authority created by an Act of the General Assembly, including but not limited to the Atlanta-region Transit Link "ATL" Authority or the Metropolitan Atlanta Rapid Transit Authority.

(b) Prior to an expenditure of any public funds for the establishment, maintenance, and operation of a fixed guideway transit in any county that is a mass transportation regional system participant, the governing authority of such county shall obtain approval from:

(1) The Atlanta-region Transit Link "ATL" Authority that such project is on the regional transit plan adopted by such authority pursuant to Code Section 50-39-12; and

(2) A majority of qualified voters of the county in a separate referendum question as provided for in this Code section.

(c) Prior to the issuance of the call for the referendum, the governing authority of the county that is a mass transportation regional system participant shall adopt a resolution which shall specify the type and location of a fixed guideway transit, the capital costs to establish such fixed guideway transit, the date upon which the capital costs to establish such fixed guideway transit shall be paid in full, and an estimate of the projected annual costs for maintenance and operation of such fixed guideway transit.

(d)(1) Whenever the governing authority of any county that is a mass transportation regional system participant wishes to submit to the electors of such county the question of whether to expend public funds for a fixed guideway transit, any such governing authority shall notify the election superintendent of such county by forwarding to the superintendent a copy of a resolution of the governing authority

calling for a referendum election. Such election shall be held with a general election, general primary election, or presidential preference primary. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of authorizing the expenditure of public funds for a fixed guideway transit to the voters of the county for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election along with a copy of the resolution adopted pursuant to subsection (c) of this Code section to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following:

"( ) YES Shall the expenditure of public funds for a
( ) NO fixed guideway transit within _____ County be approved?"

(2) All persons desiring to vote in favor of the question shall vote "Yes," and all persons desiring to vote against the question shall vote "No." If more than one-half of the votes cast are in favor of the question, then the expenditure of public funds by such county for a fixed guideway transit shall be deemed approved; otherwise, such expenditures shall continue to be prohibited. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern general elections. It shall be the superintendent's further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State. The expense of the election shall be borne by the county holding the election.

(e) This Code section shall not apply to the extension of a fixed guideway transit or levy of applicable sales and use taxes authorized pursuant to an Act known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, or Part 2 of Chapter 9 of Title 32 for which any referendum required under such Act or part shall control, or to any project within a county or between counties which have approved such sales and use tax, provided that such project is wholly within the territorial boundaries of such county or counties. (Code 1981, § 36-1-27, enacted by Ga. L. 2016, p. 862, § 1/SB 420; Ga. L. 2018, p. 377, § 4-5/HB 930.)

Effective date. — This Code section became effective July 1, 2016.

The 2018 amendment, effective May 3, 2018, substituted "Atlanta-region Transit Link 'ATL' Authority" for "Georgia Regional Transportation Authority" near the end of paragraph (a)(4); substituted the present provisions of subsection (b) for the former provisions, which read: "Prior to an expenditure of any public funds for the establishment, maintenance, and operation of a fixed guideway transit in any

county that is a mass transportation regional system participant, the governing authority of such county shall obtain approval from a majority of qualified voters of the county in a separate referendum question as provided for in this Code section."; and, in the middle of subsection (e), substituted "known as the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, or Part 2 of Chapter 9 of Title 32" for "approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,'", and inserted "or part". See Editor's notes for applicability.

Editor's notes. — Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act becomes effective January 1, 2019.

CHAPTER 3

COUNTY BOUNDARIES

ARTICLE 2

SETTLEMENT OF BOUNDARY DISPUTES

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

36-3-20. Presentment of boundary dispute by grand jury; certification to Governor; appointment of surveyor to define line; return of survey and plat to Secretary of State.

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

36-3-23. Filing of survey and plat with Secretary of State; time for protest or exceptions thereto.

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

36-3-24. Notice and hearing of protest or exceptions by Secretary of State.

JUDICIAL DECISIONS

Secretary has discretion in conducting hearing. — On remand of a county boundary dispute under O.C.G.A. § 36-3-20 et seq., a trial court erred by proscribing the Secretary of State from holding a new hearing or considering additional evidence before determining the boundary between two counties; O.C.G.A. § 36-3-24 gave the Secretary broad discretion in making the Secretary's determination. Kemp v. Monroe County, 298 Ga. 67, 779 S.E.2d 330 (2015).

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

36-3-25. Recordation of survey and plat; conclusive effect; subsequent changes of boundary line.

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

Secretary has discretion in conducting hearing. — On remand of a county boundary dispute under O.C.G.A. § 36-3-20 et seq., a trial court erred by proscribing the Secretary of State from holding a new hearing or considering additional evidence before determining the boundary between two counties; O.C.G.A. § 36-3-24 gave the Secretary broad discretion in making the Secretary's determination. Kemp v. Monroe County, 298 Ga. 67, 779 S.E.2d 330 (2015).

CHAPTER 5

ORGANIZATION OF COUNTY GOVERNMENT

Article 2
County Governing Authorities

Sec.
36-5-24. Definitions; compensation of members of county governing authorities.

ARTICLE 2

COUNTY GOVERNING AUTHORITIES

36-5-24. Definitions; compensation of members of county governing authorities.

(a) As used in this Code section, the term:

(1) "County governing authority" means a governing authority as defined in paragraph (7) of Code Section 1-3-3 and an elected county chief executive officer.

(2) "Expenses in the nature of compensation" means any expense allowance or any form of payment or reimbursement of expenses other than reimbursement for expenses actually and necessarily incurred by members of a county governing authority.

(b) Unless otherwise provided by local law, the governing authority of each county is authorized to fix the salary, compensation, expenses, and expenses in the nature of compensation of the members of the governing authority subject to the following conditions:

(1) Any increase in salary, compensation, expenses, or expenses in the nature of compensation for members of a county governing authority shall not be effective until the first day of January of the year following the next general election held after the date on which the action to increase the compensation was taken;

(2) A county governing authority shall take no action to increase salary, compensation, expenses, or expenses in the nature of compensation until notice of intent to take such action and the fiscal impact of such action has been published in a newspaper designated as the legal organ of the county at least once a week for three consecutive weeks immediately preceding the meeting at which the action is taken; and

(3) Such action shall not be taken during the period of time beginning with the date that candidates for election as members of the county governing authority may first qualify as such candidates

and ending with the first day of January following the date of qualification.

(c) Salary, compensation, expenses, and expenses in the nature of compensation paid to members of a county governing authority in accordance with applicable local or general salary laws in effect on January 1, 2001, and as subsequently amended, shall continue in full force and effect as compensation for such county officials unless such compensation is increased pursuant to subsection (b) of this Code section; and this Code section shall not affect the power of the General Assembly at any time by local or general law to increase or decrease any or all of such compensation or by local law to withdraw the authority otherwise granted to a county governing authority under this Code section. (Code 1981, § 36-5-24, enacted by Ga. L. 2001, p. 789, § 1; Ga. L. 2013, p. 141, § 36/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "of the county" for "for the county" in the middle of paragraph (b)(2).

CHAPTER 9

COUNTY PROPERTY GENERALLY

Sec.

36-9-3. Sale or disposition of county real property generally; right of certain counties to make private sale; right of county to negotiate and consummate private sales of recreational set-asides.

36-9-2. Control and disposal of county property generally.

JUDICIAL DECISIONS

Failure to comply with O.C.G.A. § 36-9-2 not a bar to bona fide purchaser's title. — Although a county failed to comply with O.C.G.A. § 36-9-2 by recording a transfer in the minutes when the county conveyed the county's interest in property, which the county had formerly acquired by eminent domain, to the county development authority, a subsequent purchaser was a bona fide purchaser without notice of this irregularity under O.C.G.A. § 23-1-20, so that the county's title was superior to that of the condemnee's heirs, who sought to repurchase the property under O.C.G.A. § 36-9-3(g)(3)(B). Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347 (2014).

36-9-3. Sale or disposition of county real property generally; right of certain counties to make private sale; right of county to negotiate and consummate private sales of recreational set-asides.

(a)(1) Except as otherwise provided in this Code section, the governing authority of any county disposing of any real property of such county shall make all such sales to the highest responsible bidder, either by sealed bids or by auction after due notice has been given. Any such county shall have the right to reject any and all bids or cancel any proposed sale. The governing authority of the county shall cause notice to be published once in the official legal organ of the county or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a legal description of the property to be sold. If the sale is by sealed bids, the notice shall also contain an invitation for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids. If the sale is by auction, the notice shall also contain the conditions of the proposed sale and shall state the date, time, and place of the proposed sale. Bids received in connection with a sale by sealed bidding shall be opened in public at the time and place stated in the legal notice. A tabulation of all bids received shall be available for public inspection following the opening of all bids. All such bids shall be retained and kept available for public inspection for a period of not less than 60 days from the date on which such bids are opened.

(2)(A) Counties may retain the services of a Georgia licensed real estate broker to assist in the disposition of surplus real property; said brokerage services shall be procured by request for proposals in response to an issued solicitation. The proposal shall include the minimum stated broker qualifications and experience.

(B) In the event a county does retain the services of a qualified and experienced Georgia licensed real estate broker to assist in the disposition of surplus real property, the broker so retained shall:

(i) Represent the county and comply with the requirements of this Code section, including, but not limited to, issuing a call or request for sealed bids from the public and causing notice to be published once in the official legal organ of the county not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a legal

description of the real property to be sold. The notice shall also contain a request for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids;

(ii) Actively market the disposition of the real property;

(iii) Comply with all federal, state, and local laws;

(iv) Create a website which posts: the request for sealed bids; questions submitted by interested parties; responses to submitted questions as prepared by the county; dates the real property will be made available for public inspection; public information regarding the property; and other related communication and marketing information;

(v) Immediately forward the sealed bids to the governing authority of the county, which shall open such bids at the specified date, time, and place;

(vi) Only serve in the capacity of a broker engaged by a seller as provided for in Code Section 10-6A-5. A real estate broker representing a county shall be prohibited from working with or aiding a prospective buyer in connection with the disposition of real property for which the real estate broker was contracted; and

(vii) Agree to accept the agreed upon sales commission based on the highest responsive bid received as so adjudicated by the governing authority of the county, in its sole discretion.

(C) In the event the county decides to reject all bids and not award the sale to any of the bidders, the broker shall agree to accept the minimum payment in lieu of the commission as so agreed upon by the parties in an engagement contract.

(3) This subsection shall not apply to:

(A) Redemption of property held by any county under a tax deed; the granting of easements and rights of way; the sale, conveyance, or transfer of road rights of way; the sale, transfer, or conveyance to any other body politic; and any sale, transfer, or conveyance to a nonprofit corporation in order to effectuate a lease-purchase transaction pursuant to Code Section 36-60-13;

(B) Any option to sell or dispose of any real property belonging to any county of this state if that option was granted by said county prior to March 17, 1959;

(C) The sale of any real property belonging to any county in this state where the proper governing authority of the county adver-

tised the property for ten consecutive days in the newspaper in which the sheriff's advertisements for the county are published, and where the sale was awarded thereafter to the highest and best bidder, in accordance with the terms of the advertisement, and an option given in accordance with the sale for the purchaser who had deposited a part of the purchase price to pay the balance within 365 days from the date of the execution of the option, where the sale was awarded and the option granted prior to May 1, 1961; or

(D) The exchange of real property belonging to any county in this state for other real property where the property so acquired by exchange shall be of equal or greater value than the property previously belonging to the county; provided, however, that within six weeks preceding the closing of any such proposed exchange of real property, a notice of the proposed exchange of real property shall be published in the official organ of the county once a week for four weeks. The value of both the property belonging to the county and that to be acquired through the exchange shall be determined by appraisals and the value so determined shall be approved by the proper authorities of said county.

(b) In any county of the state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census, where the governing authority thereof has established or constituted an advisory commission, board, or authority to study and make recommendations for the future development, use, and sale of county owned property, the governing authority of such county shall have the right, with the advice and approval of such commission, board, or authority, to negotiate and consummate a private sale of any county owned property, notwithstanding the provisions of subsection (a) of this Code section. Where there is no commission, board, or authority established in such county for the particular class or type of property, the governing authority of such county shall nevertheless have the right to negotiate a private sale of any county owned property with the advice and approval of the grand jury.

(c)(1) Any county governing authority and the governing authority of any consolidated government may sell, grant, lease, rent, convey, or transfer any real property owned by the county or consolidated government, including real property dedicated or used as a park or recreation area, to the local board of education or other public educational institution for use as a site for a public school or other educational purpose. Any county governing authority and the governing authority of any consolidated government may sell, grant, convey, or transfer to the local board of education or other public educational institution licenses, easements, or lesser interests in such real property owned by the county or the consolidated govern-

ment, including real property dedicated or used as a park or recreation area for such purposes. A county governing authority and the governing authority of any consolidated government are authorized to exchange real property, including real property dedicated or used as a park or recreation area, with the local board of education or other public educational institution for other real property for such purposes. Such a sale, grant, lease, rental, conveyance, or transfer may be made by negotiation between the governing authority and local board of education or other public educational institution without advertisement, bidding, auction, notice, publication, or referendum. This subsection shall not be construed to abrogate or impair any reverter provision or other condition of a sale, grant, conveyance, or transfer of real property to a county governing authority or governing authority of a consolidated government.

(2) Prior to executing any sale, grant, lease, rental, conveyance, or transfer pursuant to the provisions of paragraph (1) of this subsection, the governing authority proposing such action shall hold a public hearing in the immediate vicinity of the affected property. Such hearing shall be advertised by posting conspicuous notice at the place of the hearing and at the affected property. The governing authority shall have at least one representative at the public hearing to receive the comments and concerns expressed and to report such comments and concerns to the governing authority.

(3) After the public hearing provided in paragraph (2) of this subsection but before the action proposed under paragraph (1) of this subsection, the governing authority proposing the action shall hold at least one meeting to discuss the transaction in light of the comments and concerns expressed at the public hearing.

(d) Notwithstanding subsection (a) of this Code section, where the governing authority has, prior to March 1, 1987, approved and recommended the sale or disposal of county owned real property containing an area of less than 20,000 square feet, the governing authority shall have the right to negotiate and consummate a private sale of such property, provided such sale is for at least the fair market value of the property. Notice of the intention of the county governing authority to make a private sale shall be published once a week for four weeks in the official organ of the county.

(e) Notwithstanding subsection (a) of this Code section, where the governing authority has prescribed a system of recreational set-asides where developers are required to set aside a certain amount of property in each new subdivision for recreational purposes and where those recreational set-asides have been conveyed to the county governing authority at no cost to the county, the county governing authority shall have the right to negotiate and consummate a private sale of such

property to a homeowners' association representing the majority of property owners in the subdivision where the recreational set-aside property is located, provided that the use of the property shall be for recreational purposes for a period of not less than five years from the date of the sale. Notice of intention of the county governing authority to make a private sale shall be published once a week for four weeks in the official organ of the county.

(f) Notwithstanding any provision of this Code section to the contrary or any other provision of law or ordinance to the contrary, whenever any county determines that the establishment of a facility of the state or one of its authorities or other instrumentalities would be of benefit to the county, by way of providing activities in an area in need of redevelopment, by continuing or enhancing local employment opportunities, or by other means or in other ways, such county may sell or grant any of its real or personal property to the state or to any of its authorities or instrumentalities and, further, may sell or grant such lesser interests, rental agreements, licenses, easements, and other dispositions as it may determine necessary or convenient. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way.

(g)(1) As used in this subsection, the term "lake" means an impoundment of water in which at least 1,000 acres of land were to be submerged.

(2) Notwithstanding any provision of this Code section or any other law to the contrary, whenever any county has acquired property for the creation or development of a lake, including but not limited to property the acquisition of which was reasonably necessary or incidental to the creation or development of that lake, and the governing authority of such county thereafter determines that all of the property is no longer needed because of a decision by the county to not construct the lake, that county is authorized to dispose of such property or interest therein as provided in this subsection.

(3)(A) In disposing of property, as authorized under this subsection, the county shall notify the owner of such property at the time of its acquisition or, if the tract from which the county acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the county acquired its property. Any notice required pursuant to this subparagraph shall be in writing and delivered to the appropriate owner or by publication if such owner's address is unknown. Such owner shall have the right to acquire such property, as provided in this subsection.

(B) If the original owner of the property at the time of the county's acquisition of such property is deceased, the original

owner's spouse, child, or grandchild shall have the first opportunity to purchase the property which the county is disposing of pursuant to this subsection; provided, however, the owner's child shall have such right only if the owner's spouse is deceased or has waived his or her right to purchase the property, and the owner's grandchild shall have such right only if both the owner's spouse and child either are deceased or have waived their right to buy the property. If the original owner's spouse is deceased and the original owner had more than one child or grandchild and such children or grandchildren have a right to purchase the property pursuant to this paragraph, then such children or grandchildren shall be entitled to purchase the property as tenants in common. The county shall place a notice of a sale proposed pursuant to this subparagraph once in the county legal organ. If after 45 days from the date of such publication the original owner's spouse, child, or grandchild has not come forward, or if the tract from which the county acquired its property has been subsequently sold, the county shall notify the owner of abutting land holding title through the owner from whom the county acquired its property as provided in subparagraph (A) of this paragraph. Publication pursuant to this subparagraph, if necessary, shall be in a newspaper of general circulation in the county where the property is located.

(4) When an entire parcel acquired by the county or any interest therein is being disposed of, it may be acquired under the right created in paragraph (3) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition. When only remnants or portions of the original acquisition are being disposed of, they may be acquired for the market value thereof at the time the county decides the property is no longer needed.

(5) If the right of acquisition is not exercised within 60 days after due notice, the county shall proceed to sell such property as provided in subsection (a) of this Code section. The county shall thereupon have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(h) Notwithstanding any provision of this Code section or of any other law, ordinance, or resolution to the contrary, a county governing authority is authorized to sell and convey parcels of small or narrow strips of land, so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development ordinances or land use plans, or as streets, whether owned in fee or used by easement, to abutting property owners where such sales and conveyances facilitate the enjoyment of the highest and best use of the abutting owner's property without first submitting the sale or

conveyance to the process of an auction or the solicitation of sealed bids; provided, however, that each abutting property owner shall be notified of the availability of the property and shall have the opportunity to purchase said property under such terms and conditions as set out by ordinance.

(i)(1) As used in this subsection, the terms "conservation easement" and "holder" shall have the meanings as set forth in Code Section 44-10-2.

(2) Notwithstanding any provision of this Code section or of any other law, ordinance, or resolution to the contrary, whenever the governing authority of any county determines that the establishment of a conservation easement would be of benefit to the county and to its citizens by way of retaining or protecting natural, scenic, or open-space values of real property; assuring the availability of the property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of the property, such governing authority may sell or grant to any holder a conservation easement over any of its real property, including but not limited to any of its real property set aside for use as a park. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way; provided, however, that a conservation easement shall not be created, granted, or otherwise conveyed for the purpose of preventing, frustrating, or interfering with the exercise of the power of eminent domain by any public utility or other entity authorized to exercise the power of eminent domain. (Code 1933, § 91-804.1, enacted by Ga. L. 1959, p. 325, § 1; Ga. L. 1960, p. 1124, § 1; Ga. L. 1961, p. 195, § 1; Ga. L. 1962, p. 65, § 1; Ga. L. 1965, p. 239, § 1; Ga. L. 1971, p. 678, § 1; Ga. L. 1972, p. 560, § 1; Ga. L. 1981, p. 539, § 1; Ga. L. 1982, p. 2107, § 33; Ga. L. 1983, p. 3, § 27; Ga. L. 1987, p. 3, § 36; Ga. L. 1987, p. 1100, § 1; Ga. L. 1988, p. 676, § 1; Ga. L. 1990, p. 877, § 1; Ga. L. 1992, p. 1348, § 1; Ga. L. 1992, p. 1352, §§ 1, 2; Ga. L. 1994, p. 237, § 2; Ga. L. 1998, p. 1036, § 1; Ga. L. 2010, p. 746, § 1/HB 703; Ga. L. 2010, p. 1078, § 1/SB 390; Ga. L. 2018, p. 255, § 1/SB 397.)

The 2018 amendment, effective July 1, 2018, added paragraph (a)(2); and redesignated former paragraph (a)(2) as present paragraph (a)(3).

JUDICIAL DECISIONS

Application. — Trial court properly granted summary judgment to a county and purchaser because the prior owner of the property condemned by the county never had a binding contract with the county to re-purchase a remnant, unused portion and there was no conflict between O.C.G.A. §§ 32-7-3, 32-7-4, and 36-9-3(h) and the county's code amendment. Hubert Props., LLP v. Cobb County, 318 Ga. App. 321, 733 S.E.2d 373 (2012).

Heirs unable to repurchase be-

cause bona fide purchaser had purchased. — Although a county failed to comply with O.C.G.A. § 36-9-2 by recording a transfer in the minutes when the county conveyed the county's interest in property, which the county had formerly acquired by eminent domain, to the county development authority, a subsequent purchaser was a bona fide purchaser without notice of this irregularity under O.C.G.A. § 23-1-20, so that the county's title was superior to that of the condemnee's heirs, who sought to repurchase the property under O.C.G.A. § 36-9-3(g)(3)(B). Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347 (2014).

CHAPTER 10

PUBLIC WORKS CONTRACTS

36-10-1. Contracts to be in writing and entered on minutes.

Law reviews. — For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

JUDICIAL DECISIONS

ANALYSIS

ENFORCEABILITY OF CONTRACTS
TYPES OF CONTRACTS

Enforceability of Contracts

Ultra vires contract not enforceable under quantum meruit theory of recovery. — Appellate court erred by holding that an environmental engineering company could recover against a city on the company's quantum meruit claim because quantum meruit was not an available remedy against the city since the claim was based on a municipal contract that was ultra vires as the contract was never approved by city council. City of Baldwin v. Woodard & Curran, Inc., 293 Ga. 19, 743 S.E.2d 381 (2013).

Types of Contracts

Applicability to salaries of county officials.

In a dispute between a county and a county state court judge over a supplement to the judge's salary, summary judgment for the judge was proper on the county's claim for reimbursement of the judge's salary supplement because the county failed to show that the supplement was paid with the total absence or want of power. Even if the supplement was paid in violation of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., the county's counterclaim was filed well outside the 90-day limitation period in O.C.G.A. § 50-14-1(b)(2). Heiskell v. Roberts, 342 Ga. App. 109, 802 S.E.2d 385 (2017).

No waiver of sovereign immunity without written contract. — Developer failed to meet the developer's burden of showing waiver of sovereign immunity because even if the parties' conduct after the expiration of the contract could be found to demonstrate that the developer was to continue to perform under the original contract, as a matter of law, neither that conduct nor the internal documents created by state agency after the contract expired established a written contract to do so and without a written contract, the state's sovereign immunity

Types of Contracts (Cont'd)

was not waived. Georgia Department of Labor v. RTT Associates, Inc., 299 Ga. 78, 786 S.E.2d 840 (2016).

CHAPTER 11

CLAIMS AGAINST COUNTIES

36-11-1. Time for presentation of claims.

Law reviews. — For survey article on local government law, see 67 Mercer L. Rev. 147 (2015). For annual survey on trial practice and procedure, see 67 Mercer L. Rev. 257 (2015).

JUDICIAL DECISIONS

Analysis

General Consideration
Presentation of Claims
Procedure

General Consideration

Construction with O.C.G.A. § 33-24-51(b). — Limited waiver of sovereign immunity set forth in O.C.G.A. § 33-24-51(b) does not implicate the 12-month presentation requirement under O.C.G.A. § 36-11-1. Warnell v. Unified Gov't of Athens-Clarke County, 328 Ga. App. 903, 763 S.E.2d 284 (2014).

Notice requirement did not apply to claims against county officials. — In a driver's action against a county recorder's court judge and others seeking damages arising out of the erroneous suspension of a driver's license, the ante litem notice, presented more than 12 months after the driver was first arrested for driving on a suspended license, was too late under O.C.G.A. § 36-11-1, barring the driver's state law claims against the county; however, § 36-11-1 did not apply to the driver's state law claims against the defendants in their individual capacities or to the driver's claim under 42 U.S.C. § 1983. Schroeder v. DeKalb County, 341 Ga. App. 748, 802 S.E.2d 277 (2017).

Cited in Clayton County v. City of College Park, 301 Ga. 653, 803 S.E.2d 63 (2017).

Presentation of Claims

Presentation of claim to outside counsel for county satisfies presentment requirement. — Trial court erred in awarding summary judgment to the county based on the fact that the letter from the plaintiff's attorney was not a proper presentment as the attorney for the county was not employed by the county in house because, to the extent that Coweta County v. Cooper, 318 Ga. App. 41 (2012), indicated that presentment could not properly be made to an outside county attorney, the supreme court disapproved of that decision; thus, notwithstanding that the county attorney was an outside attorney, the timely delivery of the plaintiff's otherwise adequate presentation of a claim against the county to the outside county attorney satisfied the statutory presentment requirement of O.C.G.A. § 36-11-1. Croy v. Whitfield County, 301 Ga. 380, 801 S.E.2d 892 (2017).

Claim barred for failure to serve ante-litem notice. — Trial court did not err in granting summary judgment to the deputy sheriff on the ground that any claim in the plaintiff's complaint that

could be construed as a claim against the sheriff was barred because the plaintiff did not serve an ante-litem notice upon the sheriff; O.C.G.A. § 36-11-1 applied to the counties and to the sheriffs, when sued in their official capacities; and claims against a sheriff were not sustainable without the ante-litem notice. Davis v. Morrison, 344 Ga. App. 527, 810 S.E.2d 649 (2018).

Role of county attorney in presentment. — Presentment to the county attorney, inside or outside, is presentment for the purposes of O.C.G.A. § 36-11-1. Croy v. Whitfield County, 301 Ga. 380, 801 S.E.2d 892 (2017).

Presentment of a claim against a county under O.C.G.A. § 36-11-1 may be submitted to the governing authority by way of the county attorney as a matter of law. Croy v. Whitfield County, 301 Ga. 380, 801 S.E.2d 892 (2017).

Outside law firm not authorized to receive notice for county. — Trial court erred by ruling that there was substantial compliance with O.C.G.A. § 36-11-1 by plaintiffs sending notice of the plaintiff's suit against a county to a private law firm used by the county as outside legal counsel because the firm was not in-house or any department or official of a county and, thus, was not authorized to receive notice. Coweta County v. Cooper, 318 Ga. App. 41, 733 S.E.2d 348 (2012).

Procedure

Time to submit claim.

Under O.C.G.A. § 36-11-1, all claims against counties must be presented within 12 months after the claims accrue or become payable or the claims are barred, provided that minors or other persons laboring under disabilities shall be allowed 12 months after the removal of the disability to present their claims. Coweta County v. Cooper, 318 Ga. App. 41, 733 S.E.2d 348 (2012).

Trial court did not err by denying a county's motion for summary judgment because an issue of fact existed as to when the parties expected the project to be complete; thus, it followed that there was an issue of fact regarding when, if ever, the county breached the county's agreement to provide water and sewer lines and when the plaintiff's claim of breach of contract accrued and therefore whether the bankruptcy trustee timely filed notice as required by O.C.G.A. § 36-11-1. Effingham County v. Roach, 329 Ga. App. 805, 764 S.E.2d 600 (2014), overruled on other grounds, Rivera v. Washington, 298 Ga. 770, 784 S.E.2d 775 (2016).

Trial court properly granted a county's motion for summary judgment because the record showed that the plaintiffs failed to present notice of the plaintiffs' claim to the county with the 12-month statutory period and admittedly failed to present the county with formal written notice before the plantiffs filed the plaintiffs' suit, which the plaintiffs did not file against the County until more than 22 months after the accident. Warnell v. Unified Gov't of Athens-Clarke County, 328 Ga. App. 903, 763 S.E.2d 284 (2014).

CHAPTER 12

SUPERVISION AND SUPPORT OF PAUPERS

Sec.
36-12-5. Interment or cremation of deceased indigents.

36-12-5. Interment or cremation of deceased indigents.

(a) Whenever any person dies in this state and the decedent, his or her family, and his or her immediate kindred are indigent and unable

to provide for the decedent's decent interment or cremation, the governing authority of the county wherein the death occurs shall make available from county funds a sum sufficient to provide a decent interment or cremation of the deceased indigent person or to reimburse such person as may have expended the cost thereof voluntarily, the exact amount thereof to be determined by the governing authority of the county but shall not exceed the lesser of the actual costs of interment or cremation.

(b) The Department of Corrections is authorized to reimburse the governing authority of the county where expenditures have been made in accordance with this Code section for the burial or cremation of any inmate under the authority, jurisdiction, or control of the Department of Corrections; but in no case shall the governing authority of the county be entitled to reimbursement where the decedent was in the custody of a county correctional institution or other county correctional facility. (Ga. L. 1863-64, p. 60, § 1; Code 1868, § 788; Code 1873, § 766; Code 1882, § 766; Civil Code 1895, § 441; Civil Code 1910, § 556; Code 1933, § 23-2304; Ga. L. 1967, p. 616, § 1; Ga. L. 1972, p. 971, § 1; Ga. L. 1974, p. 616, § 1; Ga. L. 1978, p. 1048, § 1; Ga. L. 1980, p. 722, § 1; Ga. L. 1982, p. 2107, § 34; Ga. L. 1983, p. 3, § 27; Ga. L. 1985, p. 265, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1991, p. 431, §§ 1, 2; Ga. L. 2013, p. 669, § 1/SB 83.)

The 2013 amendment, effective July 1, 2013, inserted "or cremation" throughout this Code section; in subsection (a), twice inserted "or her", substituted "the decedent's decent" for "his decent", and inserted "but shall not exceed the lesser of the actual costs of interment or cremation" at the end.

CHAPTER 15

COUNTY LAW LIBRARY

Sec.		Sec.	
36-15-1.	Board of trustees created in each county; composition; chairperson; quorum.		court cases; amount; determination of need as prerequisite to collection; collection in certain criminal cases.
36-15-7.	Use of funds.	36-15-13.	Annual audit required.
36-15-9.	Collection of additional costs in		

36-15-1. Board of trustees created in each county; composition; chairperson; quorum.

There is created in each county in this state a board to be known as the board of trustees of the county law library, hereafter referred to as the board. The board shall consist of the chief judge of the superior court of the circuit in which the county is located; the judge of the

probate court; the senior judge of the state court, if any; the chief judge of the magistrate court; the district attorney of the circuit in which the county is located; a solicitor-general of the state court, if any; the clerk of the superior court; and two practicing attorneys of the county. The practicing attorneys shall be selected by the other trustees and shall serve at their pleasure. All of the trustees shall serve without pay. The chief judge of the superior court shall be chairperson of the board. A majority of the members of the board shall constitute a quorum for the purpose of transacting all business that may come before the board. (Ga. L. 1971, p. 180, § 1; Ga. L. 1973, p. 430, § 1; Ga. L. 1997, p. 392, § 1; Ga. L. 2016, p. 435, § 2/HB 851; Ga. L. 2017, p. 548, § 1/HB 453.)

The 2016 amendment, effective April 26, 2016, substituted the present provisions of the second sentence of this Code section for the former provisions, which read: "The board shall consist of the chief judge of the superior court of the circuit in which the county is located, the judge of the probate court, the senior judge of the state court, if any, a solicitor-general of the state court, if any, the clerk of the superior court, and two practicing attorneys of the county."

The 2017 amendment, effective July 1, 2017, inserted "the chief judge of the magistrate court;" in the middle of the second sentence.

36-15-7. Use of funds.

(a) The money paid into the hands of the treasurer of the board of trustees of the county law library shall be used for the purchase of law books, reports, texts, periodicals, supplies, desks, and equipment and for the maintenance, upkeep, and operation of the law library, including the services of a librarian and, within the discretion of the board of trustees, payment for purchases made by a county's superior court, state court, probate court, magistrate court, or juvenile court, and for the purchase or leasing of computer related legal research equipment and programs, and, at the discretion of the county governing authority, for the establishment and maintenance of the codification of county ordinances. However, the amount transferred to the county governing authority for codification pursuant to this subsection shall not exceed the cost of establishing or maintaining the codification.

(b) In addition to the uses specified in subsection (a) of this Code section, the board of trustees of a county law library shall be authorized to use funds to establish a law library or libraries for the judges of the superior courts of the judicial circuit and for the judges of the state court in which the county lies. A request for the establishment of one or more such libraries shall be made to the board of trustees by the chief judge of the judicial circuit with the assent of a majority of the superior court judges of the circuit or by the chief judge of the state court of the county with the assent of a majority of the state court judges of the county. Additionally, the probate judge, chief magistrate, presiding juvenile court judge, or any chief judge of any county court may make

a similar request. It shall be in the discretion of the board of trustees of each county whether to grant such a request. Any one or more county boards of trustees in the judicial circuit may participate in the establishment of the law library or libraries and, for the purpose of such participation, may enter into agreements regarding the proportional share of expenditures to be borne by each county board of trustees. Purchases made from county law library funds under this subsection shall not duplicate the law books and materials supplied to each judge by the state or by other sources. Such purchases shall become the property of the judge who requested the purchase and shall be passed on to his or her successor in office.

(c) In the event the board of trustees determines in its discretion that it has excess funds, such funds as may be designated by the board of trustees shall be disbursed by the board of trustees to charitable tax-exempt organizations which provide civil legal representation for low-income people; used to purchase software, equipment, fixtures, or furnishings for any office related to county judicial facilities or services, including, but not limited to, courtrooms and jury rooms; or turned over to the county commissioners and used by the county commissioners for the purchase of software, equipment, fixtures, or furnishings for the courthouse.

(d) Except as provided in subsection (b) of this Code section, all law books, reports, texts, and periodicals purchased by the use of gifts and from the funds of the county law library shall become the property of the county. (Ga. L. 1971, p. 180, § 7; Ga. L. 1973, p. 430, § 4; Ga. L. 1982, p. 1103, § 1; Ga. L. 1983, p. 3, § 27; Ga. L. 1987, p. 843, § 1; Ga. L. 1994, p. 1923, § 2; Ga. L. 1997, p. 392, § 2; Ga. L. 2000, p. 865, § 1; Ga. L. 2002, p. 785, § 1; Ga. L. 2010, p. 555, § 1/HB 858; Ga. L. 2016, p. 435, § 3/HB 851.)

The 2016 amendment, effective April 26, 2016, substituted the present provisions of subsection (c) for the former provisions, which read: "In the event the board of trustees determines in its discretion that it has excess funds, such funds as may be designated by the board of trustees shall be granted to charitable tax exempt organizations which provide civil legal representation for low-income people. Any remaining excess funds shall be turned over to the county commissioners, and said funds shall be used by the county commissioners for the purchase of fixtures and furnishings for the courthouse."

36-15-9. Collection of additional costs in court cases; amount; determination of need as prerequisite to collection; collection in certain criminal cases.

(a) For the purpose of providing funds for those uses specified in Code Section 36-15-7, a sum not to exceed $5.00, in addition to all other legal costs, may be charged and collected in each action or case, either civil or criminal, including, without limiting the generality of the

foregoing, all adoptions, certiorari, applications by personal representatives for leave to sell or reinvest, trade name registrations, applications for change of name, and all other proceedings of civil or criminal or quasi-criminal nature, filed in the superior, state, probate, and any other courts of record, except county recorders' courts or municipal courts. The amount of such additional costs to be charged and collected, if any, in each such case shall be fixed by the chief judge of the superior court of the circuit in which such county is located. Such additional costs shall not be charged and collected unless the chief judge first determines that a need exists for a law library in the county. The clerk of each and every such court in such counties in which such a law library is established shall collect such fees and remit the same to the treasurer of the board of trustees of the county law library of the county in which the case was brought, on the first day of each month. Where fees collected by the treasurer have been allocated for the purpose of establishing or maintaining the codification of county ordinances, the allocated amount shall in turn be remitted by the treasurer to the county governing authority for said purpose on a monthly basis or as otherwise agreed by the treasurer and the county governing authority. The county ordinance code provided for in subsection (a) of Code Section 36-15-7 shall be maintained by the county governing authority. When the costs in criminal cases are not collected, the cost provided in this Code section shall be paid from the fine and bond forfeiture fund of the court in which the case is filed, before any other disbursement or distribution of such fines or forfeitures is made.

(a.1) In any county having a population of more than 550,000 according to the United States decennial census of 1980 or any future such census, the power and authority provided in subsection (a) of this Code section for the chief judge shall be exercised by the superior court judge who has the most service as a superior court judge.

(b) A case, within the meaning of subsection (a) of this Code section, shall mean and be construed as any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned, whether such matter is contested or not.

(c) Reserved.

(d) Notwithstanding that provision of subsection (a) of this Code section which excepts recorders' courts from the requirement of charging and collecting the additional costs provided for by said subsection (a), said subsection (a) and subsection (b) of this Code section shall be applicable to the recorder's court of each county of this state having a population of not less than 200,000 nor more than 275,000 according to the United States decennial census of 1980 or any future such census.

(e) Notwithstanding that provision of subsection (a) of this Code section which excepts county recorders' courts and municipal courts

from the requirement of charging and collecting the additional costs provided for by that subsection (a), subsections (a) and (b) of this Code section shall apply to any municipal court of a municipality if the governing authority thereof, by ordinance or resolutions, approves the charging and collecting of such costs pursuant to subsections (a) and (b) of this Code section.

(f) Reserved.

(g) In counties where a law library authorized by this chapter has not been established, upon request of the county governing authority, the chief judge of a circuit shall direct that the fees authorized by this Code section be charged and collected for the purpose of the establishment and maintenance of the codification of county ordinances. However, the amount transferred to the county governing authority pursuant to this subsection shall not exceed the cost of establishing or maintaining the codification. The clerk of each and every court in such counties in which costs are collected for the purpose of carrying out the provisions of this subsection shall remit the same to the county governing authority on the first day of each month. The county ordinance code provided for in this subsection shall be maintained by the county governing authority. When the costs in criminal cases are not collected, the cost provided in this Code section shall be paid from the fine and bond forfeiture fund of the court in which the case is filed before any other disbursement or distribution of such fines or forfeitures is made. (Ga. L. 1971, p. 180, §§ 6, 9; Ga. L. 1973, p. 430, § 3; Ga. L. 1976, p. 700, § 2; Ga. L. 1982, p. 520, §§ 1, 2; Ga. L. 1982, p. 591, § 1; Ga. L. 1982, p. 1103, § 2; Ga. L. 1983, p. 3, § 27; Ga. L. 1985, p. 999, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1987, p. 843, § 2; Ga. L. 1991, p. 1324, § 6; Ga. L. 1993, p. 91, § 36; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 1923, § 3; Ga. L. 1997, p. 392, §§ 3, 4; Ga. L. 1999, p. 81, § 36; Ga. L. 2000, p. 865, § 2; Ga. L. 2015, p. 693, § 3-33/HB 233; Ga. L. 2016, p. 435, § 4/HB 851.)

The 2015 amendment, effective July 1, 2015, substituted "fine and bond forfeiture fund" for "fines and forfeitures fund" in the last sentence in subsections (a) and (g). See Editor's notes for applicability.

The 2016 amendment, effective April 26, 2016, substituted "Reserved" for "The sums provided for in subsection (a) of this Code section for actions, cases, or proceedings civil in nature which are filed in the superior courts shall be collected in accordance with the provisions of subsection (b) of Code Section 15-6-77" in subsection (f).

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-15-13. Annual audit required.

Each board created pursuant to this chapter shall, at the end of each fiscal year for the preceding year, have an annual audit of its financial affairs, books, and accounts performed by the county accountant as employed pursuant to Code Section 36-1-10; the internal auditor employed by the governing authority of the county, if such internal auditor is a certified public accountant; or a certified public accountant. The determination of the performance of such audit by the county accountant, the internal auditor, or a certified public accountant shall be made by the board. Such audit shall be conducted in accordance with generally accepted accounting principles, including, but not limited to, a report on whether the control, deposit, and investment of funds, the receipt and investment of money and property, and the use of funds by such board have been conducted as provided for under this chapter. A copy of such audit shall be made available to the governing authority of the county and shall be a public document. (Code 1981, § 36-15-13, enacted by Ga. L. 2016, p. 435, § 5/HB 851.)

Effective date. — This Code section became effective April 26, 2016.

Provisions Applicable to Municipal Corporations Only

CHAPTER 30

GENERAL PROVISIONS

Sec.
36-30-9. Compensation of law enforcement officers.

Cross references. — Self authentication, § 24-9-902.

36-30-1. Meaning of terms "city," "town," "municipality," or "village."

Law reviews. — For article, "Researching Georgia Law," see 34 Ga. St. U.L. Rev. 741 (2015).

JUDICIAL DECISIONS

Cited in Ga. Reg'l Transp. Auth. v. Foster, 329 Ga. App. 258, 764 S.E.2d 862 (2014).

36-30-3. Ordinances of a council not to bind succeeding councils; exceptions.

Law reviews. — For annual survey on local government law, see 64 Mercer L. Rev. 213 (2012). For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
SPECIFIC CONTRACTS

General Consideration

Applicability to authorities.

Dismissal of a probationer's claims, seeking to invalidate the service contract between the state court and the private company that contracted to supervise the court's probationers and for money had and received, was proper due to failure to state a claim because there was no challenge to the alternative ground that the district court had relied on. Keen v. Judicial Alternatives of Ga., Inc., No. 15-13764, 2015 U.S. App. LEXIS 21961 (11th Cir. Dec. 17, 2015), cert. denied, 137 S. Ct. 55, 196 L. Ed. 2d 30 (U.S. 2016) (Unpublished).

Cited in Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

Specific Contracts

Agreement to construct and maintain parking area and sidewalk. — Agreement entered in 1954 between a city and an apartment owner for the construction of a parking lot and sidewalk to relieve traffic congestion was not subject to O.C.G.A. § 36-30-3(a)'s prohibition against binding successor councils because the construction and maintenance of the sidewalk and parking area were in the nature of a government's proprietary functions. Unified Gov't of Athens-Clarke Co. v. Stiles Apts., 295 Ga. 829, 764 S.E.2d 403 (2014).

City not bound by county's issuance of fifteen year alcohol license. — Although a nude dancing business had entered into a 15-year contract with the newly-incorporated city's predecessor (the county) for an alcohol license, the city was not bound by the county's agreement pursuant to O.C.G.A. § 36-30-3(a). Trop, Inc. v. City of Brookhaven, 296 Ga. 85, 764 S.E.2d 398 (2014).

36-30-7. Authorization and procedure for surrender of corporate charter.

JUDICIAL DECISIONS

Cited in Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013).

36-30-9. Compensation of law enforcement officers.

It shall be unlawful for any municipal corporation to provide commissions or percentages of any fines and bond forfeitures derived from any arrests made by law enforcement officers as compensation or any part thereof. The sole basis of compensating such employees shall be by a fixed salary, to be provided by the governing authority of such municipal corporation. (Ga. L. 1963, p. 479, § 1; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in the first sentence of this Code section. See Editor's notes for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

CHAPTER 31

INCORPORATION OF MUNICIPAL CORPORATIONS

Sec.
36-31-6. Responsibility of the Attorney General for preclearances [Repealed].
36-31-7.1. Ownership and control of county road rights of way.
36-31-8. Transition periods for governmental functions; appointment by the Governor of interim representatives.

36-31-1. Legislative intent.

JUDICIAL DECISIONS

Cited in City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

36-31-2. Two-year inapplicability of provisions regarding inactive municipalities.

JUDICIAL DECISIONS

Cited in City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

36-31-5. Certificate of existence of minimum standards; manner of determination; disposition and evidentiary effect of certificate.

JUDICIAL DECISIONS

Cited in City of Baldwin v. Woodard & Curran, Inc., 293 Ga. 19, 743 S.E.2d 381 (2013).

36-31-6. Responsibility of the Attorney General for preclearances.

Reserved. Repealed by Ga. L. 2015, p. 385, § 6-3/HB 252, effective July 1, 2015.

Editor's notes. — This Code section was based on Code 1981, § 36-31-6, enacted by Ga. L. 2005, p. 185, § 3/HB 36.

Ga. L. 2015, p. 385, § 1-1/HB 252, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

36-31-7.1. Ownership and control of county road rights of way.

(a) When a new municipal corporation is created by Act of the General Assembly, the new municipality shall assume the ownership, control, care, and maintenance of county road rights of way located within the area incorporated unless the municipality and the county agree otherwise by joint resolution.

(b) This Code section shall apply to any new municipal corporation created by Act of the General Assembly on or after April 15, 2005. (Code 1981, § 36-31-7.1, enacted by Ga. L. 2015, p. 1358, § 2/HB 477.)

Effective date. — This Code section became effective May 12, 2015.

36-31-8. Transition periods for governmental functions; appointment by the Governor of interim representatives.

(a) When a new municipal corporation is created by local Act, the local Act may provide for a transition period not to exceed 24 months for the orderly transition of governmental functions from the county to the new municipal corporation. The local Act may specify the time or times during the transition period (or the method or methods for determining the time or times during the transition period) at which:

(1) Various governmental functions, services, and responsibilities will be assumed by the new municipal corporation within its territory; and

(2) The municipal court of the new municipality shall begin to exercise its jurisdiction over various subject matters.

(b) When a chartering local Act so provides for a transition period, the county in which the new municipality is located shall continue to provide within the territory of the new city all government services and functions which it provided as of the date of enactment of the chartering local Act. The county shall continue to provide such services and functions until the end of the transition period; provided, however, that the new city may assume the provision of any service or function at such earlier time as may be specified in the chartering local Act or at such earlier time as may be agreed upon by the county and the new city.

(c) When a chartering local Act so provides for a transition period, on and after the first day the initial governing authority takes office, the governing authority may from time to time adopt appropriate measures to initiate collection within the territory of the new city during the transition period of all taxes, fees, assessments, fines and bond forfeitures, and other moneys. Where a particular tax, fee, assessment, fine, forfeiture, or other amount collected by the city during the transition period is specifically related to the provision of a particular government service or function by the county, the service or function shall continue to be provided by the county during the transition period contingent upon payment by the city of the actual cost of providing such service or function unless otherwise provided in a written agreement between the new city and the county.

(d) When a chartering local Act so provides for a transition period, the county in which the new city is located shall not from the time of enactment of the charter until the end of the transition period remove from the county road system any road within the territory of the new city except with the agreement of the new city.

(e) When a chartering local Act so provides for a transition period, the new municipality shall not be subject to the laws specified in this subsection during the transition period; provided, however, that the new city and other political subdivisions may during the transition period commence planning, negotiations, and other actions necessary or appropriate for compliance after the transition period. During the transition period, the new municipality shall not be subject to:

(1) Chapter 70 of this title, relating to planning and service delivery strategies;

(2) Provisions of Code Section 12-8-31.1, relating to solid waste planning;

(3) Provisions of Code Section 48-13-56, relating to reporting of excise taxes collected and expended pursuant to Article 3 of Chapter 13 of Title 48; and

(4) Provisions of Code Section 36-81-8, relating to reporting of local government finances, reporting of revenues derived from a tax levied pursuant to Article 3 of Chapter 13 of Title 48, and reporting of local government services and operations.

(f) When a chartering local Act so provides for a transition period, upon the termination of the transition period subsections (b) through (e) of this Code section shall cease to apply and the new city shall be a fully functioning municipal corporation and subject to all general laws of this state.

(g) As of the date a chartering local Act is approved by the Governor or becomes law without such approval, the Governor is authorized to appoint five persons to serve as interim representatives of the newly incorporated municipality until the election of the municipality's first governing authority. The interim representatives shall cease to serve as of the time the members of the first governing authority take office. The function of the interim representatives shall be to facilitate the provision of municipal services and facilities, the collection of taxes and fees, and the negotiation of intergovernmental agreements in preparation of the establishment of the new municipality. The interim representatives shall not have the ability to enter into any binding agreements, to expend public funds, or to incur any liability on behalf of the new municipality. Any person who is serving as or has served as an interim representative shall be ineligible to qualify for election as a member of the initial governing authority of the new municipality. (Code 1981, § 36-31-8, enacted by Ga. L. 2005, p. 185, § 3/HB 36; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in the first sentence of subsection (c). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015). For article, "The Municipalization of Urban Counties in Georgia," see 23 Ga. Bar. J. 18 (Dec. 2017).

36-31-12. Legislative findings; special districts divided into noncontiguous areas; information required in audits; informational summary.

JUDICIAL DECISIONS

Cited in City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

CHAPTER 32

MUNICIPAL COURTS

Article 1

General Provisions

Sec.
36-32-1. Establishment of municipal court; punishments; selection, election, or appointment of mayor pro tempore or recorder pro tempore.
36-32-2. Appointment of judges.
36-32-2.1. Removal of judges.
36-32-6. Jurisdiction in marijuana possession cases; retention of fines and bond forfeitures; transfer of cases.
36-32-7. Jurisdiction in cases of operating motor vehicle without effective insurance; retention of fines and bond forfeitures; transfer of cases.
36-32-8. Jurisdiction in cases of operating motor vehicle without certificate of emission inspection; retention of fines and bond forfeitures; transfer of cases.
36-32-9. Misdemeanor theft by shoplifting or misdemeanor refund fraud; transfer of cases; penalties; retention of fines and bond forfeitures; reports.
36-32-10. Jurisdiction in cases of furnishing alcoholic beverages to and purchase and possession of alcoholic beverages by underage persons; retention of fines and bond forfeitures; transfer of cases; penalties.
36-32-10.1. Jurisdiction in counties without state court to try violations of Code Section 16-7-21; retention of fines and bond forfeitures; transfer of cases; penalties.

Article 3

Council of Municipal Court Judges

36-32-41. Savings plans and deferred compensation plans for council members.

ARTICLE 1

GENERAL PROVISIONS

36-32-1. Establishment of municipal court; punishments; selection, election, or appointment of mayor pro tempore or recorder pro tempore.

(a) Each municipal corporation of this state shall, unless otherwise provided in the local law relating to a particular municipal corporation, be authorized to establish and maintain a municipal court having jurisdiction over the violation of municipal ordinances and over such other matters as are by general law made subject to the jurisdiction of municipal courts. Any such court shall be styled as a municipal court. Any reference in this Code or in any local law to a corporate court, police court, recorder's court, mayor's court, or any such court known by any other name which has jurisdiction over the violation of municipal offenses shall be deemed to mean a municipal court. Except in this Code section and in the laws relating to the City Court of Atlanta, the terms "corporate court," "corporate courts," "police court," "police courts,"

"recorder's court," "recorders' courts," "mayor's court," and "mayors' courts," when such terms refer to a court of a municipal corporation, are stricken wherever they appear in any general or local law of this state and the term "municipal court" or "municipal courts," whichever is appropriate, is inserted in lieu thereof. The change in the name of any such court as provided for by Article VI, Section X, Paragraph I of the Constitution of the State of Georgia and by this Code section shall not affect the validity of any action or prosecution in such court.

(b) The provisions of this chapter shall apply equally to all municipal courts, whether heretofore styled as a municipal court, corporate court, police court, recorder's court, or mayor's court or called by some other name and whether established by the municipal corporation under authority granted to the municipal corporation or established by the local law relating to a particular municipal corporation.

(c) Each municipal court of this state, unless otherwise provided in the local law relating to a particular municipal court, shall be authorized to impose any punishment up to the maximums specified by general law, including the maximums specified in subparagraphs (a)(2)(B) and (a)(2)(C) of Code Section 36-35-6.

(d) The governing bodies of the municipal corporations of this state having a municipal court are authorized and empowered, either by ordinance or resolution, to select, elect, or appoint either a mayor pro tempore or a recorder pro tempore to hold and preside over such municipal court in the absence or disqualification of the mayor or recorder. While presiding in such corporate courts, the mayor pro tempore or recorder pro tempore shall have such power, authority, and jurisdiction as is given by the charter of the municipal corporation to its mayor or recorder.

(e) Subsection (d) of this Code section shall not affect any municipal corporation for which provision is made in the charter for the appointment or selection of a mayor pro tempore or a recorder pro tempore.

(f) Any municipal court operating within this state and having jurisdiction over the violation of municipal ordinances and over such other matters as are by specific or general law made subject to the jurisdiction of municipal courts shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation, or other loss of liberty, as authorized by general law or municipal or county ordinance, unless the court provides to the accused the right to representation by a lawyer, and provides to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Council for representation of indigent persons in this state.

(g) Any municipal court operating within this state that has jurisdiction over the violation of municipal or county ordinances or such other statutes as are by specific or general law made subject to the jurisdiction of municipal courts, and that holds committal hearings in regard to such alleged violations, must provide to the accused the right to representation by a lawyer, and must provide to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Council for representation of indigent persons in this state.

(h) Any municipality or municipal court may contract with the office of the circuit public defender of the judicial circuit in which such municipality is located as a means of complying with the municipality's or municipal court's legal obligation to provide defense counsel at no cost to indigent persons appearing before the court in relation to violations of municipal ordinances, county ordinances, or state laws. (Ga. L. 1922, p. 133, §§ 1, 2; Code 1933, §§ 69-702, 69-703; Ga. L. 1986, p. 784, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 2003, p. 191, § 9; Ga. L. 2015, p. 519, § 8-9/HB 328.)

The 2015 amendment, effective July 1, 2015, deleted substituted "Georgia Public Defender Council" for "Georgia Public Defender Standards Council" near the end of subsections (f) and (g).

OPINIONS OF THE ATTORNEY GENERAL

Member of General Assembly may not serve as municipal court judge. — While the separation of powers doctrine does not apply where the issues relate solely to municipal officials utilizing municipal powers, it does apply where it concerns a municipal court judge exercising state judicial powers. Because of that, the exercise of those state judicial powers by a legislator would be a violation of the constitutional prohibition against a member of one branch exercising the powers of another branch of government. Therefore a member of the Georgia General Assembly may not serve as a municipal court judge. 2014 Op. Att'y Gen. No. U2014-2.

36-32-1.1. Municipal court judges; qualifications to serve.

OPINIONS OF THE ATTORNEY GENERAL

Member of General Assembly may not serve as municipal court judge. — While the separation of powers doctrine does not apply where the issues relate solely to municipal officials utilizing municipal powers, it does apply where it concerns a municipal court judge exercising state judicial powers. Because of that, the exercise of those state judicial powers by a legislator would be a violation of the constitutional prohibition against a member of one branch exercising the powers of another branch of government. Therefore a member of the Georgia General Assembly may not serve as a municipal court judge. 2014 Op. Att'y Gen. No. U2014-2.

36-32-2. Appointment of judges.

(a) Notwithstanding any other provision of this chapter or any general or local Act, the governing authority of each municipal corporation within this state having a municipal court, as provided by the Act incorporating the municipal corporation or any amendments thereto, is authorized to appoint a judge of such court. Any individual appointed as a judge under this Code section shall possess such qualifications as set forth in Code Section 36-32-1.1 and shall receive such compensation as shall be fixed by the governing authority of the municipal corporation. Any individual appointed as a judge under this Code section shall serve for a minimum term of one year and until a successor is appointed or if the judge is removed from office as provided in Code Section 36-32-2.1. Such term shall be memorialized in a written agreement between such individual and the governing authority of the municipal corporation or in an ordinance or a charter. With respect to an individual serving as a municipal court judge in a consolidated government, the local Act shall determine the term of such judge.

(b) This Code section shall not be construed to require the governing authority of any municipal corporation to appoint a judge; but such governing authority may appoint a judge if, acting in its sole discretion, the governing authority determines that such appointment would be in the best interest of the municipal corporation. (Code 1933, § 69-704.1, enacted by Ga. L. 1973, p. 489, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1995, p. 712, § 1; Ga. L. 2016, p. 367, § 1/HB 691.)

The 2016 amendment, effective July 1, 2016, in the second sentence of subsection (a), substituted "Any individual" for "Any person" at the beginning, inserted "as set forth in Code Section 36-32-1.1" in the middle, and deleted "and shall serve at the pleasure of the governing authority" following "municipal corporation" at the end; and added the third through fifth sentences of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, "Code Section 36-32-2.1" was substituted for "Code Section 36-32-2.2" in subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

Member of General Assembly may not serve as municipal court judge. — While the separation of powers doctrine does not apply where the issues relate solely to municipal officials utilizing municipal powers, it does apply where it concerns a municipal court judge exercising state judicial powers. Because of that, the exercise of those state judicial powers by a legislator would be a violation of the constitutional prohibition against a member of one branch exercising the powers of another branch of government. Therefore a member of the Georgia General Assembly may not serve as a municipal court judge. 2014 Op. Att'y Gen. No. U2014-2.

36-32-2.1. Removal of judges.

(a) As used in this Code section, the term "judge" means an individual serving as an appointed municipal court judge.

(b)(1) A judge may be removed during his or her term of office by a two-thirds' vote of the entire membership of the governing authority of the municipal corporation for:

(A) Willful misconduct in office;

(B) Willful and persistent failure to perform duties;

(C) Habitual intemperance;

(D) Conduct prejudicial to the administration of justice which brings the judicial office into disrepute; or

(E) Disability seriously interfering with the performance of duties, which is, or is likely to become, of a permanent character.

(2) A municipality may define in its charter further conduct that may lead to a judge's removal.

• (c) Removal proceedings pursuant to subsection (b) of this Code section may be initiated only by written petition setting forth the grounds for removal of a judge signed by one or more members of the governing authority of the municipal corporation. Upon submission of the petition to remove the judge to such governing authority, the governing authority may consider the petition and determine if the petition relates to and adversely affects the administration of the office of the judge and the rights and interests of the public. If it is determined at a public meeting by a majority vote of the governing authority of the municipal corporation that there is an adverse impact, the judge may be suspended immediately and without further action for up to 60 days pending the final determination pursuant to subsection (e) of this Code section. A judge suspended pursuant to this subsection shall continue to receive the compensation from his or her office until the final determination on the petition or expiration of the suspension.

(d) If by the expiration of the suspension period no formal resolution of the petition has been made, the judge shall be reinstated.

(e) Removal proceedings shall consist of an open and public hearing held by the governing authority of the municipal corporation, provided that the judge against whom such charges have been brought shall be furnished a copy of the charges at least ten days prior to the hearing. At the conclusion of the hearing, the governing authority of the municipal corporation shall determine whether or not to remove the judge from office. The governing authority of the municipal corporation may adopt rules governing the procedures at such hearings, provided that such hearings comport with due process. The right of certiorari from the decision to remove a judge from office shall exist, and such certiorari shall be obtained under the sanction of a judge of the superior court of the circuit in which the governing authority of the municipal corporation is situated.

(f) This Code section shall not affect the power and authority of the Judicial Qualifications Commission to discipline, remove, or cause the involuntary retirement of judges.

(g) Any vacancy in a judgeship created by the removal of a judge pursuant to this Code section may be temporarily filled by the governing authority of the municipal corporation for a period not longer than 90 days by any individual qualified by law to serve as a municipal court judge. If after the conclusion of the removal proceedings, including the appeal period, there is a vacancy for such judgeship, the governing authority of the municipal corporation may appoint a judge in the same manner as set forth in Code Section 36-32-2.

(h) The provisions of this Code section shall expressly supersede any conflicting local law of this state; provided, however, that this Code section shall not apply to a local Act creating a municipal court for a consolidated government. (Code 1981, § 36-32-2.1, enacted by Ga. L. 2016, p. 367, § 2/HB 691.)

Effective date. — This Code section became effective July 1, 2016.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, Code Section 36-32-2.2, as enacted by Ga. L. 2016, p. 367, § 2/HB 691, was redesignated as Code Section 36-32-2.1.

36-32-6. Jurisdiction in marijuana possession cases; retention of fines and bond forfeitures; transfer of cases.

(a) The municipal court of any municipality is granted jurisdiction to try and dispose of cases where a person is charged with the possession of one ounce or less of marijuana if the offense occurred within the corporate limits of such municipality. The jurisdiction of any such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with possession of an ounce or less of marijuana in a municipal court shall be entitled on request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county wherein the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter. (Code 1981, § 36-32-6, enacted by Ga. L. 1983, p. 825, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1997, p. 1377, § 3; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (b). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-32-7. Jurisdiction in cases of operating motor vehicle without effective insurance; retention of fines and bond forfeitures; transfer of cases.

(a) The municipal court of each municipality is granted jurisdiction to try and dispose of cases where a person is charged with a misdemeanor under Code Section 40-6-10 of knowingly operating or knowingly authorizing the operation of a motor vehicle without effective insurance of such vehicle or without an approved plan of self-insurance as required by Chapter 34 of Title 33, the "Georgia Motor Vehicle Accident Reparations Act," if the offense occurred within the corporate limits of such municipality. The jurisdiction of each such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with a misdemeanor under Code Section 40-6-10 in a municipal court shall be entitled on request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter. (Ga. L. 1974, p. 113, § 14; Ga. L. 1978, p. 1369, § 1; Code 1981, § 36-32-7, enacted by Ga. L. 1985, p. 891, § 2; Ga. L. 1987, p. 3, § 36; Ga. L. 1991, p. 94, § 36; Ga. L. 1992, p. 6, § 36; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (b). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-32-8. Jurisdiction in cases of operating motor vehicle without certificate of emission inspection; retention of fines and bond forfeitures; transfer of cases.

(a) The municipal court of each municipality of each county required to comply with Article 2 of Chapter 9 of Title 12, known as the "Georgia Motor Vehicle Emission Inspection and Maintenance Act," is granted jurisdiction to try and dispose of such cases in which a person is charged with a misdemeanor under Code Section 12-9-55 of operating a responsible motor vehicle without a certificate of emission inspection, if the offense occurred within the corporate limits of such municipality. The jurisdiction of such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with a misdemeanor under Code Section 12-9-55 in a municipal court shall be entitled upon request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine in excess of the limits set forth in Code Section 12-9-55. (Code 1981, § 36-32-8, enacted by Ga. L. 1985, p. 1390, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 6, § 36; Ga. L. 1992, p. 918, § 4; Ga. L. 1993, p. 91, § 36; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (b). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-32-9. Misdemeanor theft by shoplifting or misdemeanor refund fraud; transfer of cases; penalties; retention of fines and bond forfeitures; reports.

(a) The municipal court is granted jurisdiction to try and dispose of cases in which a person is charged with a misdemeanor theft by shoplifting or misdemeanor refund fraud if the offense occurred within the corporate limits of the municipality. The jurisdiction of such court

shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any person charged in a municipal court with misdemeanor theft by shoplifting or misdemeanor refund fraud shall be entitled upon request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(c)(1) A person convicted in a municipal court of misdemeanor theft by shoplifting shall be punished as provided in paragraph (1) of subsection (b) of Code Section 16-8-14, provided that nothing in this Code section or Code Section 16-8-14 shall be construed to give any municipality the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter.

(2) A person convicted in a municipal court of misdemeanor refund fraud shall be punished as provided in the misdemeanor penalties set forth in Code Section 16-8-14.1, provided that nothing in this Code section or Code Section 16-8-14.1 shall be construed to give any municipality the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter.

(d) Any fines and bond forfeitures arising from the prosecution of such cases in such municipal court shall be retained by the municipality and shall be paid into the treasury of such municipality.

(e) It shall be the duty of the appropriate agencies of the municipality in which an offense under subsection (a) of this Code section is charged to make any reports to the Georgia Crime Information Center required under Article 2 of Chapter 3 of Title 35. (Code 1981, § 36-32-9, enacted by Ga. L. 1987, p. 1153, § 1; Ga. L. 1998, p. 188, § 1; Ga. L. 1999, p. 831, § 1; Ga. L. 2012, p. 899, § 8-14/HB 1176; Ga. L. 2014, p. 404, § 2-3/SB 382; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2014 amendment, effective July 1, 2014, in subsections (a) and (b), inserted "or misdemeanor refund fraud"; redesignated the provisions of subsection (c) as paragraph (c)(1); and added paragraph (c)(2).

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (d). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2014, p. 404, § 3-1/SB 382, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2014, and shall apply to all conduct occurring on or after such date."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012). For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-32-10. Jurisdiction in cases of furnishing alcoholic beverages to and purchase and possession of alcoholic beverages by underage persons; retention of fines and bond forfeitures; transfer of cases; penalties.

(a) The municipal courts are granted jurisdiction to try and dispose of a first offense violation of Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age, if the offense occurred within the corporate limits of such municipal corporation. The jurisdiction of such municipal court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipal corporation and shall be paid into the treasury of such municipal corporation.

(c) Any defendant charged with a first offense violation of Code Section 3-3-23 in a municipal court shall be entitled upon request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) A person convicted in a municipal court of a first offense violation of Code Section 3-3-23 shall be punished as provided in paragraph (1) of subsection (b) of Code Section 3-3-23.1, provided that nothing in this Code section or Code Section 3-3-23.1 shall be construed to give any municipal corporation the right to impose a fine or punishment in excess of the limits set forth in the charter of such municipal corporation.

(e) Nothing in this Code section shall affect the original and exclusive jurisdiction of the juvenile court as set forth in Code Section 15-11-10. (Code 1981, § 36-32-10, enacted by Ga. L. 1987, p. 1462, § 1; Ga. L. 2000, p. 20, § 22; Ga. L. 2013, p. 294, § 4-46/HB 242; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2013 amendment, effective January 1, 2014, substituted "Code Section 15-11-10" for "Code Section 15-11-28" at the end of subsection (e). See Editor's notes for applicability.

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (b). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The

enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-32-10.1. Jurisdiction in counties without state court to try violations of Code Section 16-7-21; retention of fines and bond forfeitures; transfer of cases; penalties.

(a) The municipal court of each municipal corporation in counties where there is no state court is granted jurisdiction to try and dispose of any violation of Code Section 16-7-21, relating to criminal trespass, if the offense occurred within the corporate limits of such municipal corporation. The jurisdiction of such municipal court shall be concurrent with the jurisdiction of any other court within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of any such case in the municipal court shall be retained by the municipal corporation and shall be paid into the treasury of such municipal corporation.

(c) Any defendant charged with a violation of Code Section 16-7-21 in a municipal court shall be entitled upon request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) A person convicted of a violation of Code Section 16-7-21 shall be punished as provided in such Code section, provided that nothing in this Code section or in Code Section 16-7-21 shall be construed to give any municipal court the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter. (Code 1981, § 36-32-10.1, enacted by Ga. L. 1992, p. 1281, § 1; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (b). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

ARTICLE 3

COUNCIL OF MUNICIPAL COURT JUDGES

36-32-41. Savings plans and deferred compensation plans for council members.

(a) The Council of Municipal Court Judges of Georgia is authorized to create and oversee savings plans and deferred compensation plans for its members in good standing.

(b) Participation in such plans shall be optional for members of the council in good standing.

(c) Such plans shall be funded solely by the individual contributions of the members of the council who choose to participate in the plan.

(d) No money or other funds collected through a municipal court shall be used to fund such plans.

(e) The creation and oversight of such plans by the council shall not create a debt or other financial obligation for this state or any political subdivision of this state.

(f) The creation and oversight of such plans by the council shall not create any fiduciary liability on the part of the council. (Code 1981, § 36-32-41, enacted by Ga. L. 2017, p. 470, § 1/HB 370.)

Effective date. — This Code section became effective July 1, 2017.

CHAPTER 33

LIABILITY OF MUNICIPAL CORPORATIONS FOR ACTS OR OMISSIONS

Sec.

36-33-5. Written demand prerequisite to action for injury to person or property; time for presenting claim and for consideration by governing authority; suspension of limitations; statement of specific amount of monetary damages sought; service of claim on city officials.

36-33-1. Immunity from liability for damages; waiver of immunity by purchase of liability insurance; liability for acts or omissions generally.

Law reviews. — For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015). For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

JUDICIAL DECISIONS

Analysis

General Consideration
Liability for Ministerial Functions
Nuisances
Roads and Bridges
Sewers
Other Duties

General Consideration

Waiver by purchase of liability insurance.

Although a fact issue existed as to whether a city had waived the city's sovereign immunity by purchasing insurance that covered an arrestee's claims arising from an arrest for burglary, the claims for slander, fraud, false imprisonment, and racketeering failed because there was probable cause to make the arrest. Gray v. Ector, 541 Fed. Appx. 920 (11th Cir. 2013) (Unpublished).

Court must apply proper analysis. — Judgment of the appellate court affirming the trial court's grant of summary judgment to a city based on sovereign immunity was vacated because the appellate court, like the trial court's ruling on the city's motion, gave no consideration to whether the alleged negligence by the city occurred in the performance of a governmental function and did not acknowledge or apply the definitions of governmental and ministerial functions as those terms relate to the city's sovereign immunity. Primas v. City of Milledgeville, 296 Ga. 584, 769 S.E.2d 326 (2015).

Cited in City of Greensboro v. Rowland, 334 Ga. App. 148, 778 S.E.2d 409 (2015).

Liability for Ministerial Functions

Failure to provide medical care to inmate. — In a negligence action filed by an inmate based on the city's and the police chief's failure to provide medical care to the inmate, because the provision of medical care to inmates in the city's and the police chief's custody was a ministerial act, as the duty was imposed by statute, and medical care was a fundamental right of inmates in custody, sovereign or governmental immunity was not applicable, and the trial court did not err by denying the city's and the police chief's motion to dismiss for failure to state a claim based on sovereign immunity. City of Atlanta v. Mitcham, 262 Ga. App. 754, 586 S.E.2d 430 (2013).

The care of inmates in the custody of a municipal corporation is a governmental function for which sovereign immunity has not been waived. City of Atlanta v. Mitcham, 296 Ga. 576, 769 S.E.2d 320 (2015).

Inmate precluded from pursuing negligence claim. — Appellate court erred by affirming a trial court's denial of a city's motion to dismiss an inmate's complaint because the care of inmates in the custody of a municipal corporation is a governmental function for which sovereign immunity has not been waived; therefore, the inmate was precluded from pursuing negligence claims. City of Atlanta v. Mitcham, 296 Ga. 576, 769 S.E.2d 320 (2015).

Claims arising from improper detention. — In a detainee's suit against a sheriff, county, and city arising out of the detainee's improper detention, the defen-

Liability for Ministerial Functions (Cont'd)

dants' motion to dismiss was denied as to the sheriff's individual liability for violations of federal law, and for failure to update the detainee's criminal record as required by O.C.G.A. § 42-4-7 and bring the detainee before a judicial officer; however, claims against the city and county were dismissed based on immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and Ga. Const. 1983, Art. IX, Sec. II, Para. IX. Purvis v. City of Atlanta, 142 F. Supp. 3d 1337 (N.D. Ga. 2015).

Nuisances

Sovereign immunity for negligence but not nuisance. — Trial court erred in not granting a city's motion to dismiss the negligence claims against the city because the city was exercising a governmental function when the city demolished an abandoned house which was claimed to be a nuisance; therefore, the city was entitled to sovereign immunity on those claims. City of Atlanta v. Durham, 324 Ga. App. 563, 751 S.E.2d 172 (2013).

Roads and Bridges

Tree limb crashing on pedestrian. — City was not entitled to summary judgment on the pedestrian's claims for injuries suffered when a tree limb crashed on the pedestrian as the pedestrian walked on a city street because maintenance of the streets was a ministerial duty, O.C.G.A. § 36-33-1(b), required by O.C.G.A. § 32-4-93(a), and there was evidence that the tree was visibly decayed or dying. City of Fitzgerald v. Caruthers, 332 Ga. App. 731, 774 S.E.2d 777 (2015).

Defect is question for jury.

In a wrongful death case, the trial court properly denied a city summary judgment on the plaintiffs' negligence and nuisance claims based on the obstruction in the line of sight caused by a tree as a jury had to determine whether the tree located on the city's right of way obstructed the view of oncoming traffic such that the tree was a defect within the meaning of O.C.G.A. § 32-4-93. Mayor & Aldermen of Savannah v. Herrera, 343 Ga. App. 424, 808 S.E.2d 416 (2017).

Sewers

Nuisance theory liability.

Trial court erred by granting summary judgment to a city on a property owner's nuisance claim because evidence existed that the property had been subjected to repeated flooding and that the city had notice of the problem, creating a jury issue as to whether the city had created a nuisance by failing to install a back flow preventer as the city had done for other properties. J. N. Legacy Group v. City of Dallas, 322 Ga. App. 475, 745 S.E.2d 721 (2013).

Other Duties

City immune for clerk's action of issuing a business license. — Suit by parents against a city alleging that the city negligently issued a day care business license to a day care, which left their child in a hot car, resulting in the child's death, was barred by sovereign immunity because the issuance of a license was a government function. Calloway v. City of Warner Robins, 336 Ga. App. 714, 783 S.E.2d 175 (2016).

36-33-2. Liability for failure to perform discretionary act.

JUDICIAL DECISIONS

Sewage back up. — Trial court erred by granting summary judgment to a city on a property owner's nuisance claim because evidence existed that the property had been subjected to repeated flooding and that the city had notice of the problem, creating a jury issue as to whether the city had created a nuisance by failing to install a back flow preventer as the city had done for other properties. J. N. Legacy Group v. City of Dallas, 322 Ga. App. 475, 745 S.E.2d 721 (2013).

Sovereign immunity for negligence but not nuisance. — Trial court erred in not granting a city's motion to dismiss the negligence claims against the city because

the city was exercising a governmental function when the city demolished an abandoned house which was claimed to be a nuisance; therefore, the city was entitled to sovereign immunity on those claims. City of Atlanta v. Durham, 324 Ga. App. 563, 751 S.E.2d 172 (2013).

36-33-4. Personal liability of councilmembers and other municipal officers.

JUDICIAL DECISIONS

Immunity from liability.

City manager had official immunity in a defamation case under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and O.C.G.A. § 36-33-4 since: (1) the city finance director did not show that a statement the city manager made to the media regarding the city manager's concerns in the city finance director's department was outside the scope of the city manager's authority; (2) the city manager did not disclose anything to the city finance director's prospective employer that the prospective employer did not obtain through a Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., request; and (3) there was no policy that prohibited the city manager from verbally responding in conjunction with the city manager's Open Records Act response. Smith v. Lott, 317 Ga. App. 37, 730 S.E.2d 663 (2012).

Appellate court erred by affirming the grant of the individual defendants' motion to dismiss in a personal injury suit involving a pedestrian falling at a high school because whether official immunity barred the action was a fact-specific inquiry that had not been definitively answered since limited discovery had been undertaken. Austin v. Clark, 294 Ga. 773, 755 S.E.2d 796 (2014).

Trial court properly granted summary judgment to the mayor and the council member defendants based on governmental liability because the remedies provided under O.C.G.A. § 36-33-4 could not be judicially grafted onto the Whistleblower Act, O.C.G.A. § 45-1-4, which does not mention that code section, nor provides for individual liability. Rintoul v. Tolbert, 341 Ga. App. 688, 802 S.E.2d 56 (2017).

36-33-5. Written demand prerequisite to action for injury to person or property; time for presenting claim and for consideration by governing authority; suspension of limitations; statement of specific amount of monetary damages sought; service of claim on city officials.

(a) No person, firm, or corporation having a claim for money damages against any municipal corporation on account of injuries to person or property shall bring any action against the municipal corporation for such injuries, without first giving notice as provided in this Code section.

(b) Within six months of the happening of the event upon which a claim against a municipal corporation is predicated, the person, firm, or corporation having the claim shall present the claim in writing to the governing authority of the municipal corporation for adjustment, stating the time, place, and extent of the injury, as nearly as practicable, and the negligence which caused the injury. No action shall be entertained by the courts against the municipal corporation until the cause

of action therein has first been presented to the governing authority for adjustment.

(c) Upon the presentation of such claim, the governing authority shall consider and act upon the claim within 30 days from the presentation; and the action of the governing authority, unless it results in the settlement thereof, shall in no sense be a bar to an action therefor in the courts.

(d) The running of the statute of limitations shall be suspended during the time that the demand for payment is pending before such authorities without action on their part.

(e) The description of the extent of the injury required in subsection (b) of this Code section shall include the specific amount of monetary damages being sought from the municipal corporation. The amount of monetary damages set forth in such claim shall constitute an offer of compromise. In the event such claim is not settled by the municipal corporation and the claimant litigates such claim, the amount of monetary damage set forth in such claim shall not be binding on the claimant.

(f) A claim submitted under this Code section shall be served upon the mayor or the chairperson of the city council or city commission, as the case may be, by delivering the claim to such official personally or by certified mail or statutory overnight delivery. (Ga. L. 1899, p. 74, § 1; Civil Code 1910, § 910; Code 1933, § 69-308; Ga. L. 1953, Ex. Sess., p. 338, § 1; Ga. L. 1956, p. 183, § 1; Ga. L. 2014, p. 125, § 1/HB 135.)

The 2014 amendment, effective July 1, 2014, deleted "subsection (b) of" preceding "this Code section" near the end of subsection (a) and added subsections (e) and (f).

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014). For annual survey on trial practice and procedure, see 66 Mercer L. Rev. 211 (2014). For survey article on local government law, see 67 Mercer L. Rev. 147 (2015). For annual survey on trial practice and procedure, see 67 Mercer L. Rev. 257 (2015). For annual survey on local government law, see 68 Mercer L. Rev. 199 (2016). For annual survey on labor and employment law, see 69 Mercer L. Rev. 141 (2017). For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).

For note, "Taking a Toll on the Equities: Governing the Effect of the PLRA'S Exhaustion Requirements on State Statutes of Limitations," 47 Ga. L. Rev. 1321 (2013).

JUDICIAL DECISIONS

Analysis

General Consideration
Sufficiency of Notice
Time of Notice and Action
Procedure

General Consideration

Applicability to whistleblower claims. — City employee who filed suit under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4, seeking money damages, among other remedies, was not required to provide written notice of the employee's claim within six months of the alleged retaliation under the municipal ante litem notice statute, O.C.G.A. § 36-33-5, because the claim was not a negligence claim. West v. City of Albany, 300 Ga. 743, 797 S.E.2d 809 (2017).

Claim for attorney fees and costs. Firefighters' request for costs of litigation, including attorney fees, was properly submitted to the jury in the firefighters' class action, challenging a promotional examination, as the firefighters were not statutorily required to give ante-litem notice to the city. City of Atlanta v. Bennett, 322 Ga. App. 726, 746 S.E.2d 198 (2013).

Construction with Georgia Tort Claims Act. — The tolling provision of O.C.G.A. § 36-33-5(d) cannot be harmonized with the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., and, thus, has no application to suits brought pursuant to the GTCA, notwithstanding the language of O.C.G.A. § 50-21-27(e). Ga. Reg'l Transp. Auth. v. Foster, 329 Ga. App. 258, 764 S.E.2d 862 (2014).

Applies only against municipal corporations. — By its plain terms, O.C.G.A. § 36-33-5(d) applies only against municipal corporations, whether under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., or otherwise. Foster v. Ga. Reg'l Transp. Auth., 297 Ga. 714, 777 S.E.2d 446 (2015).

Applicability to breach of contract. Subcontractor seeking to recover against a city for payment for work performed under a subcontract under theories of unjust enrichment, quantum merit, and implied obligation to pay was not required to comply with the ante litem notice requirements before filing suit because O.C.G.A. § 36-33-5(a) applied only to tort claims regarding personal injury or property damage. Contrary language in Jacks v. City of Atlanta, 284 Ga. App. 200 (2007),was disapproved. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101 (2015), cert. denied, No. S15C1141, 2015 Ga. LEXIS 471 (Ga. 2015).

Sufficiency of Notice

Letters held sufficient. No precise standard for determining whether any given ante litem notice is substantively sufficient exists. Therefore, the trial court properly denied a city's motion to dismiss for failure to give proper ante litem notice because the landowners' letters were sufficient to put the city on notice of the general character of the complaint, namely the claim of a continuing nuisance on their property caused by the city's water drainage system, and in a general way, of the time, place, and extent of the injury, namely, the flooding was ongoing and that the damage amounted to a taking of their property. City of Greensboro v. Rowland, 334 Ga. App. 148, 778 S.E.2d 409 (2015), cert. denied, No. S16C0305, 2016 Ga. LEXIS 154 (Ga. 2016).

Notice found to be insufficient. In a personal injury suit against a city, the trial court properly granted summary judgment in favor of the city because the notice the pedestrian provided under O.C.G.A. § 36-33-5 did not accurately identify the address for the missing water meter cover the pedestrian was alleged to have stepped into, thus, the notice failed to substantially comply with the statutory requirement. It is not the geographic proximity of the addresses that matters; rather, to substantially comply with the statute, O.C.G.A. § 36-33-5, the notice itself must provide enough information for a city to be able to properly investigate and adjust a claim pre-litigation. Williams v. City of Atlanta, 342 Ga. App. 470, 803 S.E.2d 614 (2017).

Time of Notice and Action

Tolling of claims against municipal corporations. — In a tort action brought by a passenger against a regional transportation authority, the reversal of the denial of the authority's motion for judgment on the pleadings was upheld because by its terms, O.C.G.A. § 36-33-5(d) permitted the tolling of the period of limitation only for claims against municipal

Time of Notice and Action (Cont'd)

corporations and it was not a municipal corporation. Foster v. Ga. Reg'l Transp. Auth., 297 Ga. 714, 777 S.E.2d 446 (2015).

Procedure

Necessity of alleging timely notice. That part of the holding in Dover v. City of Jackson, 246 Ga. App. 524 (2000), requiring an ante litem notice for a statutory claim for attorney fees and costs of litigation is overruled because it is contrary to the specific statutory language, which limits its applicability to claims brought "on account of injuries to person or property"; the holding also ignores the courts' duty to strictly construe the statute because it is in derogation of common law. Greater Atlanta Home Builders Ass'n, Inc. v. City of McDonough, 322 Ga. App. 627, 745 S.E.2d 830 (2013).

CHAPTER 34

POWERS OF MUNICIPAL CORPORATIONS GENERALLY

36-34-2. Powers relating to administration of government generally.

JUDICIAL DECISIONS

ANALYSIS

PUBLIC EMPLOYEES

Public Employees

City ordinance increasing pension plan contribution rate. — Trial court properly granted the city defendants summary judgment on the city employees' claims of breach of contract and unconstitutional impairment of contract regarding an ordinance increasing their pension plan contribution rate because the Georgia General Assembly expressly contemplated that a municipal corporation's provision for employee retirement or pension benefits would be subject to being supplemented by local law. Borders v. City of Atlanta, 298 Ga. 188, 779 S.E.2d 279 (2015).

RESEARCH REFERENCES

ALR. — Construction and application of U.S. Const. Art. I, § 10, cl. 1, and state constitutional provisions proscribing state bills of attainder, 63 A.L.R. 6th 1.

CHAPTER 35

HOME RULE POWERS

Sec.
36-35-6. Limitations on home rule powers.

36-35-3. Adoption of ordinances, rules, and regulations; amendment of charters and amendment or repeal of ordinances, rules, and regulations by petition and referendum.

Law reviews. — For comment, "Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source," see 62 Emory L.J. 217 (2012).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Quo warranto granted to remove a city attorney improperly appointed by the mayor. — Writ of quo warranto challenging a city mayor's appointment of a city attorney was properly granted because a council member's abstention on a motion to delegate the power of appointment to the mayor was no vote at all; therefore, there was no tie vote on the motion, and the mayor was not authorized to vote in its favor, leaving authority to appoint an attorney with the council, in accordance with the city charter. Jones v. Boone, 297 Ga. 437, 774 S.E.2d 668 (2015).

36-35-4. Compensation and benefits for employees and members of governing authority; conditions and requirements governing increases for elective members of governing authority.

JUDICIAL DECISIONS

City ordinance increasing pension plan contribution rate. — Trial court properly granted the city defendants summary judgment on the city employees' claims of breach of contract and unconstitutional impairment of contract regarding an ordinance increasing their pension plan contribution rate because the Georgia General Assembly expressly contemplated that a municipal corporation's provision for employee retirement or pension benefits would be subject to being supplemented by local law. Borders v. City of Atlanta, 298 Ga. 188, 779 S.E.2d 279 (2015).

36-35-6. Limitations on home rule powers.

(a) The power granted to municipal corporations in subsections (a) and (b) of Code Section 36-35-3 shall not be construed to extend to the

following matters or to any other matters which the General Assembly by general law has preempted or may hereafter preempt; but such matters shall be the subject of general law or the subject of local Acts of the General Assembly to the extent that the enactment of such local Acts is otherwise permitted under the Constitution:

(1) Action affecting the composition and form of the municipal governing authority, the procedure for election or appointment of the members thereof, and the continuance in office and limitation thereon for such members, except as authorized in Chapter 2 of Title 21 or as provided in Code Section 36-35-4.1;

(2)(A) Action defining any offense, which so defined, is also an offense under the criminal laws of Georgia;

(B) Action providing for confinement in excess of six months; and

(C) Action providing for fines and bond forfeitures in excess of $1,000.00;

(3) Action adopting any form of taxation beyond that authorized by law or by the Constitution;

(4) Action affecting the exercise of the power of eminent domain;

(5) Action expanding the power of regulation over any business activity regulated by the Public Service Commission beyond that authorized by charter or general law or by the Constitution;

(6) Action affecting the jurisdiction of any court; and

(7) Action changing charter provisions relating to the establishment and operations of an independent school system.

(b) The power granted in subsections (a) and (b) of Code Section 36-35-3 shall not include the power to take any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power.

(c) Nothing in this Code section shall affect Code Sections 36-35-4 and 36-35-5. (Ga. L. 1965, p. 298, § 4; Ga. L. 1966, p. 296, §§ 2, 3; Ga. L. 1970, p. 346, § 1; Ga. L. 1973, p. 778, § 3; Ga. L. 1981, p. 497, § 1; Ga. L. 1983, p. 468, §§ 1, 2; Ga. L. 1984, p. 22, § 36; Ga. L. 1998, p. 295, § 3; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subparagraph (a)(2)(C). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

CHAPTER 36

ANNEXATION OF TERRITORY

Article 1

General Provisions

Sec.
36-36-3. Report identifying annexed property; maps and surveys; technical assistance to municipalities; preclearance.
36-36-4. Creation of unincorporated islands prohibited; authorization to provide services or functions.

Article 6

Annexation of Unincorporated Islands

Sec.
36-36-92. Annexation of unincorporated islands; procedures; provision of municipal services.

ARTICLE 1

GENERAL PROVISIONS

36-36-2. Effective date of annexation.

JUDICIAL DECISIONS

Annexations properly invalidated. — Judgment invalidating the City of Atlanta's attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and, thus, ineligible for annexation by Atlanta. City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

36-36-3. Report identifying annexed property; maps and surveys; technical assistance to municipalities; preclearance.

(a) The clerk, city attorney, or other person designated by the governing authority of any municipality annexing property shall file a report identifying any property annexed with the Department of Community Affairs and with the county governing authority of the county in which the property being annexed is located. Such reports shall be filed, at a minimum, not more than 30 days following the last day of the quarter in which the annexation becomes effective but may be filed more frequently. Each report shall include the following:

(1) The legal authority under which the annexation was accomplished, which shall be the ordinance or resolution number for any annexation effected pursuant to Article 2, 3, 4, or 6 of this chapter or the Act number if effected by local Act of the General Assembly;

(2) The name of the county in which the property being annexed is located; the total acreage annexed; the enactment date and effective date of the annexation ordinance, resolution, or local Act of the General Assembly;

(3) A letter from the governing authority of any municipality annexing property stating its intent to add the annexed area to maps provided by the United States Bureau of the Census during their next regularly scheduled boundary and annexation survey of the municipality and stating that the survey and map will be completed as instructed and returned to the United States Bureau of the Census; and

(4) A list identifying roadways, bridges, and rights of way on state routes that are annexed and, if necessary, the total mileage annexed.

(b) The submission of a report required under subsection (a) of this Code section shall be made in writing and may also be made in electronic format to the Department of Community Affairs and to others as required, at the discretion of the submitting municipality.

(c)(1) The Department of Community Affairs shall notify the clerk, city attorney, or other person designated by the governing authority of the annexing municipality within 30 days after receipt of a report submitted under subsection (a) of this Code section if it determines the submission to be incomplete. The annexing municipality shall file a corrected report with the department and the county governing authority where the annexed property is located within 45 days from the date of the notice of any deficiency.

(2) No annexed area shall be added to the state map until such report has been properly submitted to the Department of Community Affairs. The Department of Community Affairs shall not provide a certification of annexation to the United States Census Bureau unless the governing authority of the annexing municipality has filed a completed report as required under subsection (a) of this Code section.

(3) Compliance with the requirements of this Code section shall be construed to be merely ancillary to and not an integral part of the annexation procedure such that an annexation shall, if otherwise authorized by law, become effective even though required filings under this Code section are temporarily delayed.

(d) The Department of Community Affairs may provide technical assistance to any municipality with respect to the requirements of subsection (a) of this Code section.

(e) The Department of Community Affairs shall maintain the annexation reports submitted to it pursuant to this Code section for two years. Annexation reports shall be subject to disclosure and inspection under Article 4 of Chapter 18 of Title 50 while maintained in the possession of the Department of Community Affairs. Two years after receipt of an annexation report from a municipality, the Department of Community Affairs shall transfer possession of such report to the Division of Archives and History for permanent retention.

(f) Reserved.

(g) The governing authority of any municipality annexing property shall add all annexed areas to maps provided by the United States Census Bureau during the next regularly scheduled boundary and annexation survey of the municipality, complete the survey and map as instructed, and return them to the United States Census Bureau within the time frame requested. (Code 1981, § 36-36-3, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 1; Ga. L. 2001, p. 811, § 1; Ga. L. 2002, p. 532, § 7; Ga. L. 2011, p. 583, § 10/HB 137; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2015, p. 385, § 6-4/HB 252.)

The 2015 amendment, effective July 1, 2015, substituted "Reserved." for the former provisions of subsection (f), which read: "The clerk, city attorney, or other person designated by the governing authority of any municipality annexing property shall also file a copy of the transmittal letter to the United States Department of Justice seeking preclearance, without the attachments to such letter, with the Department of Community Affairs and with the governing authority of the county in which the property being annexed is located. This subsection shall apply so long as a filing with the United States Department of Justice is required."

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

36-36-4. Creation of unincorporated islands prohibited; authorization to provide services or functions.

(a) The creation of unincorporated islands as described in paragraph (1), (2), or (3) of this subsection shall be prohibited:

(1) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting the annexing municipality;

(2) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting any combination of the annexing municipality and one or more other municipalities; or

(3) Annexation or deannexation which would result in the creation of an unincorporated area to which the county would have no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county.

(b) When requested by resolution of the county governing authority, a municipality is authorized to provide any service or exercise any function within an unincorporated island. Such authority shall be in addition to any other authority of the municipality to provide extraterritorial services or functions. For purposes of this subsection, "unincorporated island" shall have the same meaning as contained in paragraph (3) of Code Section 36-36-90.

(c) The prohibition contained in subsection (a) of this Code section shall not apply to a local Act providing for deannexation of territory from a municipality that would create an unincorporated island where another local Act annexing the same territory into another municipality takes effect on the same date as the local Act providing for deannexation of such territory. (Code 1981, § 36-36-4, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 2; Ga. L. 2015, p. 1345, § 1/HB 432.)

The 2015 amendment, effective May 12, 2015, added subsection (c).

36-36-7. Effect of annexation upon county owned property or facilities; notice; acquisition of property or facilities by municipality.

Law reviews. — For annual survey on real property, see 66 Mercer L. Rev. 151 (2014).

JUDICIAL DECISIONS

Statute did not encompass easements owned by the county within city limits. — O.C.G.A. § 36-36-7, providing for the automatic transfer of ownership of roads and rights of way from counties to new municipalities, does not encompass property interests generally and did not operate to transfer detention pond easements owned by Fulton County to the City of Sandy Springs when the city incorporated; therefore, the county was required to maintain the ponds as long as the county owned the easements. Fulton County v. City of Sandy Springs, 295 Ga. 16, 757 S.E.2d 123 (2014).

36-36-10. Legislative intent.

JUDICIAL DECISIONS

Authority of municipality to annex during referendum process. — Trial court properly held that a municipality did not have the authority under O.C.G.A.

§ 36-36-21 to annex land that the Georgia General Assembly designated for annexation to another municipality, subject to a referendum, before the referendum took place; thus, a city was prohibited from attempting to annex property during the referendum process. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

Municipality without authority to annex land during referendum process. — Municipality does not have the authority pursuant to O.C.G.A. § 36-36-21 to annex land that the Georgia General Assembly has designated for annexation to another municipality, subject to a referendum, before the referendum takes place. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

Georgia General Assembly did not intend the alternative methods of annexation under O.C.G.A. § 36-36-10 to establish a system for municipalities to race the legislature to annex land that it already had designated for annexation under local law. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

Cited in City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

ARTICLE 1A

ANNEXATION BY LOCAL ACT OF THE GENERAL ASSEMBLY

36-36-16. Procedures for annexation; referendum.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014); City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

ARTICLE 2

ANNEXATION PURSUANT TO APPLICATION BY 100 PERCENT OF LANDOWNERS

36-36-20. "Contiguous area" defined.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014); City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

36-36-21. Annexation upon application of all land owners; filing of identification of annexed property with Department of Community Affairs and county governing authority; effect of annexation.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
LAND SUBJECT TO ANNEXATION

General Consideration

No intent to race for annexation. — Georgia General Assembly did not intend the alternative methods of annexation under O.C.G.A. § 36-36-10 to establish a system for municipalities to race the legislature to annex land that it already had designated for annexation under local law. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

Municipality without authority to annex property during referendum process. — Trial court properly held that a municipality did not have the authority under O.C.G.A. § 36-36-21 to annex land that the Georgia General Assembly designated for annexation to another municipality, subject to a referendum, before the referendum took place; thus, a city was prohibited from attempting to annex property during the referendum process. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

Land Subject to Annexation

Validity of proposed annexation not justiciable. — City's declaratory judgment action seeking to determine the validity of a proposed annexation, to which the county objected based on a local constitutional amendment creating the industrial district sought to be annexed which prohibited annexation, presented no justiciable controversy because the annexation was merely proposed. Fulton County v. City of Atlanta, 299 Ga. 676, 791 S.E.2d 821 (2016).

36-36-23. Annexation by a municipal corporation into an adjoining county.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014); City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

ARTICLE 3

ANNEXATION PURSUANT TO APPLICATION BY OWNERS OF 60 PERCENT OF LAND AND 60 PERCENT OF ELECTORS

36-36-30. "Municipal corporation" defined.

JUDICIAL DECISIONS

City failed to comply with publishing requirements. — Trial court properly granted summary judgment in favor of a county because the city failed to publish a notice as required by O.C.G.A. § 36-36-36(a) that accurately described the property to be annexed; thus, the city failed to comply, or to substantially comply, with the requirements of that statute. City of Lovejoy v. Clayton County, 335 Ga. App. 881, 783 S.E.2d 395 (2016).

Cited in City of Brookhaven v. City of

Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014); City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

36-36-32. Annexation upon application of owners of 60 percent of the land and 60 percent of the resident electors generally; application and signature requirements.

JUDICIAL DECISIONS

The 60 percent method of annexation may be used in areas with no registered voters. Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864 (1972).

City failed to comply with publishing requirements. — Trial court properly granted summary judgment in favor of a county because the city failed to publish a notice as required by O.C.G.A. § 36-36-36(a) that accurately described the property to be annexed; thus, the city failed to comply, or to substantially comply, with the requirements of that statute. City of Lovejoy v. Clayton County, 335 Ga. App. 881, 783 S.E.2d 395 (2016).

Annexations properly invalidated. — Judgment invalidating the City of Atlanta's attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and, thus, ineligible for annexation by Atlanta. City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

36-36-36. Requirement of public hearing; notice of time and place; persons entitled to be heard; right of property owner to withdraw consent.

JUDICIAL DECISIONS

City failed to comply with publishing requirements. — Trial court properly granted summary judgment in favor of a county because the city failed to publish a notice as required by O.C.G.A. § 36-36-36(a) that accurately described the property to be annexed; thus, the city failed to comply, or to substantially comply, with the requirements of that statute. City of Lovejoy v. Clayton County, 335 Ga. App. 881, 783 S.E.2d 395 (2016).

Annexations properly invalidated. — Judgment invalidating the City of Atlanta's attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and, thus, ineligible for annexation by Atlanta. City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

36-36-37. Adoption of annexing ordinance.

JUDICIAL DECISIONS

Annexations properly invalidated. — Judgment invalidating the City of Atlanta's attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations

would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and, thus, ineligible for annexation by Atlanta. City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

36-36-39. Filing of petition for declaratory judgment to determine validity of annexation; judicial review.

JUDICIAL DECISIONS

Annexations properly invalidated. — Judgment invalidating the City of Atlanta's attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and, thus, ineligible for annexation by Atlanta. City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

Cited in City of Lovejoy v. Clayton County, 335 Ga. App. 881, 783 S.E.2d 395 (2016).

36-36-40. Use of municipally owned utilities by residents of annexed territory.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014); City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

ARTICLE 4

ANNEXATION PURSUANT TO RESOLUTION AND REFERENDUM

36-36-51. Legislative declaration of policy.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014); City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

36-36-61. Restriction on applicability of article.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014); City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017).

ARTICLE 6

ANNEXATION OF UNINCORPORATED ISLANDS

36-36-92. Annexation of unincorporated islands; procedures; provision of municipal services.

(a) The governing body of each municipal corporation of the state may annex to the existing corporate limits thereof all or any portion of unincorporated islands which are contiguous to the existing limits at the time of such annexation upon compliance with the procedures set forth in this article and in accordance with the procedures provided in Article 1 of this chapter.

(b) Annexation of unincorporated islands as authorized in subsection (a) of this Code section shall be accomplished by ordinance at a regular meeting of the municipal governing authority within 30 days after written notice of intent to annex such property is mailed to the owner of such property at the last known address for such owner as it appears on the ad valorem tax records of the county in which such property is located. After the adoption of the annexation ordinance, an identification of the property annexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located, in accordance with Code Section 36-36-3.

(c) Annexation of an unincorporated island as authorized by subsection (a) of this Code section, which unincorporated island directly abuts more than one municipality, shall be by the municipality which abuts the unincorporated island along the greatest percentage of its external boundary as provided in this Code section, unless otherwise agreed to by the affected municipalities.

(d) Annexations under this article shall be at the sole discretion of the governing body of each municipality.

(e) Municipal services to the annexed area shall be provided on substantially the same basis and in the same manner as such services are provided within the rest of the municipal corporation; provided, however, the extension of water and sewer services shall be according to the policies in effect in such municipal corporation for extending water and sewer lines to individual lots and subdivisions.

(f) The provisions of this article with regard to annexation of unincorporated islands is severable as to each city and to the annexation of each unincorporated island therein. (Code 1981, § 36-36-92, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 1995, p. 840, § 1; Ga. L. 2000, p. 164, § 12; Ga. L. 2015, p. 385, § 6-5/HB 252.)

The 2015 amendment, effective July 1, 2015, deleted the former last two sentences of subsection (f), which read: "The implementation of each annexation pursuant to this article is contingent upon preclearance of each annexation by the U.S. Justice Department pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973(c). Any city annexing an unincorporated island pursuant to this article shall submit such annexation to the U.S. Justice Department for preclearance not later than 90 days following the date of adoption of the annexation ordinance by the municipal governing authority."

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

ARTICLE 7

PROCEDURE FOR RESOLVING ANNEXATION DISPUTES

36-36-110. Applicability.

JUDICIAL DECISIONS

Validity of proposed annexation not justiciable. — City was not prevented from adopting an annexation ordinance by the statutory process of O.C.G.A. § 36-36-110 et seq., that in the absence of a declaration regarding the ordinance's alleged unconstitutionality was required to be completed before the city attempted to exercise the city's legislative power of annexation, because the parties agreed the process did not apply; therefore, the city's mere proposal of annexation, and the county's objection, did not present a justiciable controversy. Fulton County v. City of Atlanta, 299 Ga. 676, 791 S.E.2d 821 (2016).

CHAPTER 37

ACQUISITION AND DISPOSITION OF REAL AND PERSONAL PROPERTY GENERALLY

Sec.
36-37-6. Disposition of municipal property generally.

36-37-6. Disposition of municipal property generally.

(a)(1) Except as otherwise provided in subsections (b) through (j) of this Code section, the governing authority of any municipal corporation disposing of any real or personal property of such municipal corporation shall make all such sales to the highest responsible bidder, either by sealed bids or by auction after due notice has been given. Any such municipal corporation shall have the right to reject any and all bids or to cancel any proposed sale. The governing authority of the municipal corporation shall cause notice to be published once in the official legal organ of the county in which the

municipality is located or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a general description of the property to be sold if the property is personal property or a legal description of the property to be sold if the property is real property. If the sale is by sealed bids, the notice shall also contain an invitation for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids. If the sale is by auction, the notice shall also contain the conditions of the proposed sale and shall state the date, time, and place of the proposed sale. Bids received in connection with a sale by sealed bidding shall be opened in public at the time and place stated in the legal notice. A tabulation of all bids received shall be available for public inspection following the opening of all bids. All such bids shall be retained and kept available for public inspection for a period of not less than 60 days from the date on which such bids are opened. The provisions of this subsection shall not apply to any transactions authorized in subsections (c) through (j) of this Code section.

(2)(A) Municipal corporations may retain the services of a Georgia licensed real estate broker to assist in the disposition of surplus real property; said brokerage services shall be procured by request for proposals in response to an issued solicitation. The proposal shall include the minimum stated broker qualifications and experience.

(B) In the event a municipal corporation does retain the services of a qualified and experienced Georgia licensed real estate broker to assist in the disposition of surplus real property, the broker so retained shall:

(i) Represent the municipal corporation and comply with the requirements of this Code section, including, but not limited to, issuing a call or request for sealed bids from the public and causing notice to be published once in the official legal organ of the county in which the municipality is located or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a legal description of the real property to be sold. The notice shall also contain a request for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids;

(ii) Actively market the disposition of the real property;

(iii) Comply with all federal, state, and local laws;

(iv) Create a website which posts: the request for sealed bids; questions submitted by interested parties; responses to submitted questions as prepared by the municipal corporation; dates the real property will be made available for public inspection; public information regarding the property; and other related communication and marketing information;

(v) Immediately forward the sealed bids to the governing authority of the municipal corporation, which shall open such bids at the specified date, time, and place;

(vi) Only serve in the capacity of a broker engaged by a seller as provided for in Code Section 10-6A-5. A real estate broker representing a municipal corporation shall be prohibited from working with or aiding a prospective buyer in connection with the disposition of real property for which the real estate broker was contracted; and

(vii) Agree to accept the agreed upon sales commission based on the highest responsive bid received as so adjudicated by the governing authority of the municipal corporation, in its sole discretion.

(C) In the event the municipal corporation decides to reject all bids and not award the sale to any of the bidders, the broker shall agree to accept the minimum payment in lieu of the commission as so agreed upon by the parties in an engagement contract.

(b) The governing authority of any municipal corporation is authorized to sell personal property belonging to the municipal corporation which has an estimated value of $500.00 or less and lots from any municipal cemetery, regardless of value, without regard to subsection (a) of this Code section. Such sales may be made in the open market without advertisement and without the acceptance of bids. The estimation of the value of any such personal property to be sold shall be in the sole and absolute discretion of the governing authorities of the municipal corporation or their designated agent.

(c) Nothing in this Code section shall prevent a municipal corporation from trading or exchanging real property belonging to the municipal corporation for other real property where the property so acquired by exchange shall be of equal or greater value than the property previously belonging to the municipal corporation; provided, however, that within six weeks preceding the closing of any such proposed exchange of real property, a notice of the proposed exchange of real property shall be published in the official organ of the municipal

corporation once a week for four weeks. The value of both the property belonging to the municipal corporation and that to be acquired through the exchange shall be determined by appraisals and the value so determined shall be approved by the proper authorities of said municipal corporation.

(d) The governing authority of any municipal corporation is authorized to sell real property in established municipal industrial parks or in municipally designated industrial development areas for industrial development purposes without regard to subsection (a) or (b) of this Code section.

(e)(1) This Code section shall not apply to any municipal corporation which has a municipal charter provision setting forth procedures for the sale of municipal property and existing as of January 1, 1976, so long as such charter provision thereafter remains unchanged and as long as such charter provision contains the minimum notice requirements as set forth in subsection (a) of this Code section.

(2) This Code section shall not apply to the disposal of property:

(A) Which is acquired by deed of gift, will, or donation and is subject to such conditions as may be specified in the instrument giving or donating the property;

(B) Which is received from the United States government or from this state pursuant to a program which imposes conditions on the disposal of such property;

(C) Which is disposed of pursuant to the powers granted in Chapter 61 of this title, the "Urban Redevelopment Law," or a homesteading program;

(D) Which is sold or transferred to another governing authority or government agency for public purposes; or

(E) Which is no longer needed for public road purposes and which is disposed of pursuant to Code Section 32-7-4.

(f) Notwithstanding any provision of this Code section or of any other law or any ordinance to the contrary, the governing authority of any municipal corporation is authorized to sell real property within its corporate limits for museum purposes to either a public authority or a nonprofit corporation which is classified as a public foundation (not a private foundation) under the United States Internal Revenue Code, for the purpose of building, erecting, and operating thereon a museum or facility for the development or practice of the arts. Such sale may be made in the open market or by direct negotiations without advertisement and without the acceptance of bids. The estimation of the value of any property to be sold shall be in the sole and absolute discretion of the

governing authority of the municipality or its designated agent; provided, however, that nothing shall prevent a municipality from trading or swapping property with another property owner if such trade or swap is deemed to be in the best interest of the municipality.

(g) Notwithstanding any provision of this Code section or of any other law or ordinance to the contrary, the governing authority of any municipal corporation is authorized to sell and convey parcels of narrow strips of land, so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development ordinances, or as streets, whether owned in fee or used by easement, to abutting property owners where such sales and conveyances facilitate the enjoyment of the highest and best use of the abutting owner's property without first submitting the sale or conveyance to the process of an auction or the solicitation of sealed bids; provided, however, that each abutting property owner shall be notified of the availability of the property and shall have the opportunity to purchase said property under such terms and conditions as set out by ordinance.

(h) Notwithstanding any provision of this Code section to the contrary or any other provision of law or ordinance to the contrary, whenever any municipal corporation determines that the establishment of a facility of the state or one of its authorities or other instrumentalities or of a bona fide nonprofit resource conservation and development council would be of benefit to the municipal corporation, by way of providing activities in an area in need of redevelopment, by continuing or enhancing local employment opportunities, or by other means or in other ways, such municipal corporation may sell or grant any of its real or personal property to the state or to any of its authorities or instrumentalities or to a bona fide nonprofit resource conservation and development council and, further, may sell or grant such lesser interests, rental agreements, licenses, easements, and other dispositions as it may determine necessary or convenient. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way.

(i)(1) As used in this subsection, the term "lake" means an impoundment of water in which at least 1,000 acres of land were to be submerged.

(2) Notwithstanding any provision of this Code section or any other law to the contrary, whenever any municipality has acquired property for the creation or development of a lake, including but not limited to property the acquisition of which was reasonably necessary or incidental to the creation or development of that lake, and the governing authority of such municipality thereafter determines that all or any part of the property or any interest therein is no longer

needed for such purposes because of changed conditions, that municipality is authorized to dispose of such property or interest therein as provided in this subsection.

(3) In disposing of property, as authorized under this subsection, the municipality shall notify the owner of such property at the time of its acquisition or, if the tract from which the municipality acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the municipality acquired its property. The notice shall be in writing delivered to the appropriate owner or by publication if such owner's address is unknown; and such owner shall have the right to acquire, as provided in this subsection, the property with respect to which the notice is given. Publication, if necessary, shall be in a newspaper of general circulation in the municipality where the property is located.

(4) When an entire parcel acquired by the municipality or any interest therein is being disposed of, it may be acquired under the right created in paragraph (3) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition. When only remnants or portions of the original acquisition are being disposed of, they may be acquired for the market value thereof at the time the municipality decides the property is no longer needed.

(5) If the right of acquisition is not exercised within 60 days after due notice, the municipality shall proceed to sell such property as provided in subsection (a) of this Code section. The municipality shall thereupon have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(j)(1) As used in this subsection, the term:

(A) "Conservation easement" shall have the same meaning as set forth in Code Section 44-10-2.

(B) "Holder" shall have the same meaning as set forth in Code Section 44-10-2.

(2) Notwithstanding any provision of this Code section or of any other law or ordinance to the contrary, whenever the governing authority of any municipal corporation determines that the establishment of a conservation easement would be of benefit to the municipal corporation and to its citizens, such governing authority may sell or grant to any holder a conservation easement over any of its real property, including but not limited to any of its real property set aside for use as a park. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way; provided, however, that a conservation easement may not be created,

granted, or otherwise conveyed for the purpose of preventing, frustrating, or interfering with the exercise of the power of eminent domain by any public utility or other entity authorized to exercise the power of eminent domain.

(k)(1) Notwithstanding any provision of this Code section or any other law to the contrary, the General Assembly by local Act may authorize the governing authority of any municipal corporation to lease or enter into a contract for a valuable consideration for the operation and management, and renewals and extensions thereof, of any real or personal property comprising fairgrounds, ballfields, golf courses, swimming pools, or other like property used primarily for recreational purposes for a period not to exceed five years to a nonprofit corporation which is qualified as exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 that will covenant to use and operate the property for annual regional fair purposes or to continue the recreational purpose for which the property was formerly used and intended on a nondiscriminatory basis for the use and benefit of all citizens of the community; provided, however, that nothing in this subsection shall have the effect of authorizing alienation of title to such property in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or that would cause the divesting of title to property dedicated to public use and not subsequently abandoned; and provided further, that the lessee or contractee under a management contract shall not mortgage or pledge the property as security for any debt or incur any encumbrance that could result in a lien or claim of lien against the property. The lease or management contract may provide for options to renew such lease or management contract for not more than three renewal periods and each such renewal period shall not be greater than the original length of such lease or management contract. As a condition of any lease or management contract, the lessee or contractee shall provide and maintain in force and effect throughout the term of such lease or management contract sufficient liability insurance, in an amount not less than $1 million per claim, no aggregate, naming the municipality as a named insured; shall assume sole responsibility for or incur liability for any injury to person or property caused by any act or omission of such person while on the property; and shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand made by such person. As an additional condition of any such lease or management contract, the lessee or contractee shall provide to and maintain with the municipality a current copy of the liability insurance policy, including any changes in such policy or coverages as such changes occur, and shall provide proof monthly in writing to the municipality that the lessee or contractee has in force

and effect the liability insurance required by this paragraph which the municipality shall retain on file. As a further condition of any lease or management contract, the lessee or contractee shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand arising out of any improvements to the property or any indebtedness or obligations incurred by the lessee or contractee in making any such improvements to such property. When the lessee or contractee charges any person to enter or go upon the land for the purpose of attending the annual regional fair or for attending or participating in recreational purposes, the consideration received by the municipal corporation for the lease or management contract shall not be deemed a charge within the meaning of Article 2 of Chapter 3 of Title 51.

(2) Any governing authority entering into a lease as provided in paragraph (1) of this subsection shall have the right unilaterally to terminate such lease after giving three months' notice of its intention to do so.

(3) Any lease entered into as provided in paragraph (1) of this subsection shall be automatically terminated upon conviction of the lessee or contractee for any offense involving the conduct of unlawful activity. In such event, any improvements to the property made by the lessee shall be forfeited. The municipality shall not be liable in any manner or subject to suit for any indebtedness or other obligations of the lessee or contractee associated with any such improvements to the property and shall take such improvements free and clear of any such indebtedness or other obligations.

(l)(1) Where not otherwise authorized by its charter or other applicable law, the governing authority of any municipal corporation may lease or enter into a contract for valuable consideration for the use, operation, or management of any real or personal property of the municipal corporation pursuant to the power granted by this subsection. The authority of any municipal corporation granted pursuant to its charter or other applicable law to enter into leases or contracts for the use, operation, or management of any real or personal property of the municipal corporation shall not be affected by this subsection and it shall not apply to any contracts or leases entered into pursuant to such authority. Where a municipal charter or other applicable law provides no authorization for leasing or contracting for the use, operation, or management of any real or personal property of the municipal corporation and this subsection is to be used as authorization for that purpose, the following shall apply:

(A) Any lease or contract for the use, operation, or management of any real or personal property for longer than 30 days shall be by sealed bids or by auction as provided in subsection (a) of this Code

section. Easements and licenses for the use of municipal property in connection with construction projects of a municipal corporation shall be exempt from this subparagraph, provided that their term is less than one year;

(B) Nothing in this subsection shall have the effect of authorizing alienation of title to such property in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or shall cause the divesting of title to property dedicated to public use and not subsequently abandoned; and

(C) The lessee or contractee shall not mortgage or pledge the property, lease or contract the property as security for any debt, or incur any encumbrance that could result in a lien or claim of lien against the property, lease, or contract.

(2) Any lease or contract for the use, operation, or management of any real or personal property entered into pursuant to this subsection and for longer than 30 days shall contain the following terms:

(A) The lessee or contractee shall provide and maintain in force in effect throughout the term of such lease or contract sufficient liability insurance, in an amount not less than $1 million per claim, no aggregate, naming the municipality as a named insured;

(B) The lessee or contractee shall assume sole responsibility for or incur liability for any injury to person or property caused by any act or omission of any person while on the property and shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand made by any person; and

(C) The lessee or contractee shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand arising out of any improvements to the property or any indebtedness or obligations incurred by the lessee or contractee in making any such improvement to such property.

(3)(A) The initial term of a lease or contract for the use of real property entered into pursuant to this subsection shall be no longer than five years and there may be one renewal period of no longer than five years, after which the lease or contract shall again be subject to sealed bids or auction.

(B) When the lessee or contractee charges any person to enter or go upon the real property for recreational purposes, the consideration received by the municipal corporation for the lease or contract shall not be deemed a charge within the meaning of Article 2 of Chapter 3 of Title 51.

(C) Where real property is leased pursuant to this Code section for the erection of telecommunications towers, the initial term of a lease or contract for the use of such real property shall be no longer than ten years and there may be one renewal period of no longer than ten years, after which the lease or contract shall again be subject to sealed bids or auction; provided, however, that such lease shall also include provisions for the removal of the telecommunications tower structure.

(4) Where this subsection is applicable, it shall apply to any lease or contract entered into or renewed on or after July 1, 2011. This subsection shall not affect any provisions of subsection (k) of this Code section.

(5) Nothing contained in this Code section shall be construed so as to expand the powers of eminent domain or to otherwise provide for additional eminent domain authority for any municipal corporation. The ability for a governing authority of a municipal corporation to exercise eminent domain shall be subject to the limitations enumerated in Chapter 2 of Title 22 and the Georgia Constitution.

(m) Notwithstanding any other provision of law to the contrary, a city may exchange property dedicated as a city park with an institution owning property in or abutting a federal National Historic Site for use in connection with such property, provided that the city receives property in fee simple that is of equal or greater acreage as the city property exchanged and that the city immediately dedicates the property as a public park. (Code 1933, § 69-318, enacted by Ga. L. 1976, p. 350, § 1; Ga. L. 1978, p. 890, §§ 1, 2; Ga. L. 1981, p. 831, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1987, p. 1051, § 2; Ga. L. 1989, p. 1418, § 1; Ga. L. 1990, p. 877, § 2; Ga. L. 1992, p. 1348, § 2; Ga. L. 1993, p. 795, § 1; Ga. L. 2001, p. 863, § 1; Ga. L. 2004, p. 1076, § 1; Ga. L. 2005, p. 60, § 36/HB 95; Ga. L. 2010, p. 1078, § 2/SB 390; Ga. L. 2011, p. 240, § 3A/HB 280; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 647, § 1A/HB 189; Ga. L. 2018, p. 255, § 2/SB 397.)

The 2013 amendment, effective July 1, 2013, added subsection (m).

The 2018 amendment, effective July 1, 2018, designated the existing provisions of subsection (a) as paragraph (a)(1); substituted "subsections (c) through (j)" for "subsections (b) through (j)" in the last sentence of paragraph (a)(1); and added paragraph (a)(2).

CHAPTER 42

DOWNTOWN DEVELOPMENT AUTHORITIES

Sec.
36-42-8. Powers of authorities generally.
36-42-17. Assessments under Code Section 36-42-16; priority of liens regarding assessments for downtown development authorities.

36-42-8. Powers of authorities generally.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To make and execute contracts, agreements, and other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, including, but not limited to, contracts for construction of projects, leases of projects, contracts for sale of projects, agreements for loans to finance projects, contracts with respect to the use of projects, and agreements to join or cooperate with an urban residential finance authority, created by the municipal corporation within which the downtown development area is located pursuant to the provisions of Chapter 41 of this title, in the exercise, either jointly or otherwise, of any or all of its powers for the purpose of financing, including the issuance of revenue bonds, notes, or other obligations of the authorities, planning, undertaking, owning, constructing, operating, or contracting with respect to any projects located within the downtown development area or, for projects under subparagraph (B) of paragraph (6) of Code Section 36-42-3, within the territorial boundaries of the municipal corporation;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To finance (by loan, grant, lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage projects and to pay the cost of any project from the proceeds of revenue bonds, notes, or other

obligations of the authority or any other funds of the authority, or from any contributions or loans by persons, corporations, partnerships (whether limited or general), or other entities, all of which the authority is authorized to receive, accept, and use;

(6) To borrow money to further or carry out its public purpose and to execute revenue bonds, notes, other obligations, leases, trust indentures, trust agreements, agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable, in the judgment of the authority, to evidence and to provide security for such borrowing;

(7) To issue revenue bonds, notes, or other obligations of the authority and use the proceeds thereof for the purpose of paying, or loaning the proceeds thereof to pay, all or any part of the cost of any project and otherwise to further or carry out the public purpose of the authority and to pay all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out such purpose;

(8) To make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other source, whether public or private, for loans, grants, guarantees, or other financial assistance in furtherance of the authority's public purpose and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or municipal government or agency or other source;

(9) To enter into agreements with the federal government or any agency thereof to use the facilities or services of the federal government or any agency thereof in order to further or carry out the public purposes of the authority;

(10) To contract for any period, not exceeding 50 years, with the State of Georgia, state institutions, or any municipal corporation or county of this state for the use by the authority of any facilities or services of the state or any such state institution, municipal corporation, or county, or for the use by any state institution or any municipal corporation or county of any facilities or services of the authority, provided that such contracts shall deal with such activities and transactions as the authority and any such political subdivision with which the authority contracts are authorized by law to undertake;

(11) To extend credit or make loans to any person, corporation, partnership (whether limited or general), or other entity for the costs of any project or any part of the costs of any project, which credit or

loans may be evidenced or secured by loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, or such other instruments, or by rentals, revenues, fees, or charges, upon such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument of such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project, and such other terms and conditions, as the authority may deem necessary or desirable;

(12) As security for repayment of any revenue bonds, notes, or other obligations of the authority, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority (including, but not limited to, real property, fixtures, personal property, and revenues or other funds) and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes, or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument. The State of Georgia, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(13) To receive and use the proceeds of any tax levied by a municipal corporation to pay the costs of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(14) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;

(15) To use any real property, personal property, or fixtures or any interest therein or to rent or lease such property to or from others or

make contracts with respect to the use thereof, or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner as it deems to the best advantage of the authority and the public purpose thereof;

(16) To acquire, accept, or retain equitable interests, security interests, or other interests in any real property, personal property, or fixtures by loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(17) To appoint, select, and employ engineers, surveyors, architects, urban or city planners, fiscal agents, attorneys, and others and to fix their compensation and pay their expenses;

(18) To encourage and promote the improvement and revitalization of the downtown development area and to make, contract for, or otherwise cause to be made long-range plans or proposals for the downtown development area in cooperation with the municipal corporation within which the downtown development area is located;

(19) To adopt bylaws governing the conduct of business by the authority, the election and duties of officers of the authority, and other matters which the authority determines to deal with in its bylaws;

(20) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(21) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(22) To serve as an urban redevelopment agency pursuant to Chapter 61 of this title;

(23) To contract with a municipal corporation to carry out supplemental services in a city business improvement district established pursuant to Chapter 43 of this title; and

(24) To serve as a redevelopment agency pursuant to Chapter 44 of this title.

(b) The powers enumerated in each paragraph of subsection (a) of this Code section are cumulative of and in addition to those powers enumerated in the other paragraphs of subsection (a) of this Code section and elsewhere in this chapter; and no such power limits or restricts any other power of the authority except that, notwithstanding any other provision of this chapter, no authority described in this chapter shall be granted the power of eminent domain. (Ga. L. 1981, p. 1744, § 6; Ga. L. 1982, p. 3, § 36; Ga. L. 1988, p. 902, § 1; Ga. L. 1988,

p. 1463, § 2; Ga. L. 1992, p. 2533, § 3; Ga. L. 2006, p. 39, § 19/HB 1313; Ga. L. 2013, p. 746, § 1/SB 242.)

The 2013 amendment, effective May 6, 2013, added "or, for projects under subparagraph (B) of paragraph (6) of Code Section 36-42-3, within the territorial boundaries of the municipal corporation" at the end of paragraph (a)(3).

36-42-17. Assessments under Code Section 36-42-16; priority of liens regarding assessments for downtown development authorities.

(a) An assessment under Code Section 36-42-16 that relates to any project described in subparagraph (B) of paragraph (6) of Code Section 36-42-3 shall be levied and may be collected when:

(1) A written contract regarding such assessment is executed by the property owner, the authority, and the project administrator;

(2) Such contract is administratively acknowledged by the relevant local jurisdiction with the taxing authority; and

(3) A notice of assessment is recorded in the property records of the relevant local jurisdiction.

(b) A lien for any assessment under Code Section 36-42-16 that relates to any project under subparagraph (B) of paragraph (6) of Code Section 36-42-3 shall have the same priority as municipal liens under paragraph (4) of subsection (b) and subparagraph (g)(2)(B) of Code Section 48-2-56. (Code 1981, § 36-42-17, enacted by Ga. L. 2015, p. 1329, § 1/SB 4; Ga. L. 2017, p. 753, § 1/HB 428.)

Effective date. — This Code section became effective July 1, 2015.

The 2017 amendment, effective July 1, 2017, added subsection (a); and designated the previously existing provisions of this Code section as subsection (b).

CHAPTER 44

REDEVELOPMENT POWERS

Sec.
36-44-3. Definitions.

36-44-2. Legislative findings and purpose.

JUDICIAL DECISIONS

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit chal-

lenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

36-44-3. Definitions.

As used in this chapter, the term:

(1) "Ad valorem property taxes" means all ad valorem property taxes levied by each political subdivision and each county and independent board of education consenting to the inclusion of that board of education's property taxes as being applicable to a tax allocation district as provided by Code Section 36-44-9, except:

(A) Those ad valorem property taxes levied to repay bonded indebtedness;

(B) Unless otherwise provided in the resolution creating such district, those ad valorem property taxes levied on personal property or on motor vehicles; and

(C) Unless otherwise provided in the resolution creating such district, those ad valorem property taxes levied on the assessed value of property owned by public utilities and railroad companies, as determined pursuant to the provisions of Chapter 5 of Title 48.

(2) "Area of operation" means, in the case of a municipality or its redevelopment agency, the territory lying within the corporate limits of such municipality; in the case of a county or its redevelopment agency, the territory lying within the unincorporated area of the county; and, in the case of a consolidated government or its redevelopment agency, the area lying within the territorial boundaries of the consolidated government. "Area of operation" may also mean the combined areas of operation of political subdivisions which participate in the creation of a common redevelopment agency to serve such participating political subdivisions as provided in subsection (d) of Code Section 36-44-4.

(3) "Local legislative body" means the official or body in which the legislative powers of a political subdivision are vested.

(4) "Political subdivision" means any county, municipality, or consolidated government of this state.

(5) "Redevelopment" means any activity, project, or service necessary or incidental to achieving the development or revitalization of a

redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan or the preservation or improvement of historical or natural assets within a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan. Without limiting the generality of the foregoing, redevelopment may include any one or more of the following:

(A) The construction of any building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;

(B) The renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of any existing building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;

(C) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public or private housing;

(D) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public works or other public facilities necessary or incidental to the provision of governmental services;

(E) The identification, preservation, renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or restoration of buildings or sites which are of historical significance;

(F) The preservation, protection, renovation, rehabilitation, restoration, alteration, improvement, maintenance, and creation of open spaces, green spaces, or recreational facilities;

(G) The construction, installation, preservation, renovation, rehabilitation, reconstruction, restoration, alteration, improvement, and maintenance of public art and arts and cultural facilities;

(H) The development, construction, reconstruction, repair, demolition, alteration, or expansion of structures, equipment, and facilities for mass transit;

(I) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of telecommunication infrastructure;

(J) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of facilities for the improvement of pedestrian access and safety;

(K) Improving or increasing the value of property; and

(L) The acquisition and retention or acquisition and disposition of property for redevelopment purposes or the use for redevelop-

ment purposes of property already owned by a political subdivision or any agency or instrumentality thereof.

(6) "Redevelopment agency" means the local legislative body of a political subdivision or a public body corporate and politic created as the redevelopment agency of the political subdivision or an existing public body corporate and politic designated as the redevelopment agency of the political subdivision pursuant to Code Section 36-44-4.

(7) "Redevelopment area" means an urbanized area as determined by current data from the United States Bureau of the Census or an area presently served by sewer that qualifies as a "blighted or distressed area," a "deteriorating area," or an "area with inadequate infrastructure," as follows:

(A) A "blighted or distressed area" is an area that is experiencing one or more conditions of blight as evidenced by:

(i) The presence of structures, buildings, or improvements that by reason of dilapidation; deterioration; age; obsolescence; inadequate provision for ventilation, light, air, sanitation, or open space; overcrowding; conditions which endanger life or property by fire or other causes; or any combination of such factors, are conducive to ill health, transmission of disease, infant mortality, high unemployment, juvenile delinquency, or crime and are detrimental to the public health, safety, morals, or welfare;

(ii) The presence of a predominant number of substandard, vacant, deteriorated, or deteriorating structures; the predominance of a defective or inadequate street layout or transportation facilities; or faulty lot layout in relation to size, accessibility, or usefulness;

(iii) Evidence of pervasive poverty, defined as being greater than 10 percent of the population in the area as determined by current data from the United States Bureau of the Census, and an unemployment rate that is 10 percent higher than the state average;

(iv) Adverse effects of airport or transportation related noise or environmental contamination or degradation or other adverse environmental factors that the political subdivision has determined to be impairing the redevelopment of the area; or

(v) The existence of conditions through any combination of the foregoing that substantially impair the sound growth of the community and retard the provision of housing accommodations or employment opportunities;

(B) A "deteriorating area" is an area that is experiencing physical or economic decline or stagnation as evidenced by two or more of the following:

(i) The presence of a substantial number of structures or buildings that are 40 years old or older and have no historic significance;

(ii) High commercial or residential vacancies compared to the political subdivision as a whole;

(iii) The predominance of structures or buildings of relatively low value compared to the value of structures or buildings in the surrounding vicinity or significantly slower growth in the property tax digest than is occurring in the political subdivision as a whole;

(iv) Declining or stagnant rents or sales prices compared to the political subdivision as a whole;

(v) In areas where housing exists at present or is determined by the political subdivision to be appropriate after redevelopment, there exists a shortage of safe, decent housing that is not substandard and that is affordable for persons of low and moderate income; or

(vi) Deteriorating or inadequate utility, transportation, or transit infrastructure; and

(C) An "area with inadequate infrastructure" means an area characterized by:

(i) Deteriorating or inadequate parking, roadways, bridges, pedestrian access, or public transportation or transit facilities incapable of handling the volume of traffic into or through the area, either at present or following redevelopment; or

(ii) Deteriorating or inadequate utility infrastructure either at present or following redevelopment.

(8) "Redevelopment costs" means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred to achieve the redevelopment of a redevelopment area or any portion thereof designated by a redevelopment plan or any expenditures made to carry out or exercise any powers granted by this chapter. Without limiting the generality of the foregoing, redevelopment costs may include any one or more of the following:

(A) Capital costs, including the costs incurred or estimated to be incurred for the construction of public works or improvements, new buildings, structures, and fixtures, including facilities owned or

operated by school districts and systems; the renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of existing buildings, structures, and fixtures, including facilities owned or operated by school districts and systems; the acquisition of equipment; and the clearing and grading of land;

(B) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued under this chapter occurring during the estimated period of construction of any project with respect to which any capital costs within the meaning of subparagraph (A) of this paragraph are financed in whole or in part by such obligations and for a period not to exceed 42 months after completion of any such construction and including reasonable reserves related thereto and all principal and interest paid to holders of evidences of indebtedness issued to pay for other redevelopment costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(C) Professional service costs, including those costs incurred for architectural, planning, engineering, financial, marketing, and legal advice and services;

(D) Imputed administrative costs, including reasonable charges for the time spent by public employees in connection with the implementation of a redevelopment plan;

(E) Relocation costs as authorized by a redevelopment plan for persons or businesses displaced by the implementation of a redevelopment plan, including but not limited to those relocation payments made following condemnation under Chapter 4 of Title 22, "The Georgia Relocation Assistance and Land Acquisition Policy Act";

(F) Organizational costs, including the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the creation and implementation of redevelopment plans;

(G) Payments to a political subdivision or board of education in lieu of taxes to compensate for any loss of tax revenues or for any capital costs incurred because of redevelopment activity; provided, however, that any such payments to a political subdivision or board of education shall not exceed in any year the amount of the contribution to the tax allocation increment in that year by such political subdivision or board of education; and

(H) Real property assembly costs.

(9) "Redevelopment plan" means a written plan of redevelopment for a redevelopment area or a designated portion thereof which:

(A) Specifies the boundaries of the proposed redevelopment area;

(B) Explains the grounds for a finding by the local legislative body that the redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan or that the redevelopment area includes one or more natural, historical, or cultural assets which have not been adequately preserved, protected, or improved and such asset or assets would not reasonably be anticipated to be adequately preserved, protected, or improved without the approval of the redevelopment plan;

(C) Explains the proposed uses after redevelopment of real property within the redevelopment area;

(D) Describes any redevelopment projects within the redevelopment area proposed to be authorized by the redevelopment plan, estimates the cost thereof, and explains the proposed method of financing such projects;

(E) Describes any contracts, agreements, or other instruments creating an obligation for more than one year which are proposed to be entered into by the political subdivision or its redevelopment agency or both for the purpose of implementing the redevelopment plan;

(F) Describes the type of relocation payments proposed to be authorized by the redevelopment plan;

(G) Includes a statement that the proposed redevelopment plan conforms with the local comprehensive plan, master plan, zoning ordinance, and building codes of the political subdivision or explains any exceptions thereto;

(H) Estimates redevelopment costs to be incurred or made during the course of implementing the redevelopment plan;

(I) Recites the last known assessed valuation of the redevelopment area and the estimated assessed valuation after redevelopment;

(J) Provides that property which is to be redeveloped under the plan and which is either designated as a historic property under Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act," or is listed on or has been determined by any federal

agency to be eligible for listing on the National Register of Historic Places will not be:

(i) Substantially altered in any way inconsistent with technical standards for rehabilitation; or

(ii) Demolished unless feasibility for reuse has been evaluated based on technical standards for the review of historic preservation projects,

which technical standards for rehabilitation and review shall be those used by the state historic preservation officer, although nothing in this subparagraph shall be construed to require approval of a redevelopment plan or any part thereof by the state historic preservation officer;

(K) Specifies the proposed effective date for the creation of the tax allocation district and the proposed termination date;

(L) Contains a map specifying the boundaries of the proposed tax allocation district and showing existing uses and conditions of real property in the proposed tax allocation district;

(M) Specifies the estimated tax allocation increment base of the proposed tax allocation district;

(N) Specifies ad valorem property taxes for computing tax allocation increments determined in accordance with Code Section 36-44-9 and supported by any resolution required under paragraph (3) of Code Section 36-44-8;

(O) Specifies the amount of the proposed tax allocation bond issue or issues and the term and assumed rate of interest applicable thereto;

(P) Estimates positive tax allocation increments for the period covered by the term of the proposed tax allocation bonds;

(Q) Specifies the property proposed to be pledged for payment or security for payment of tax allocation bonds which property may include positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, subject to the limitations of Code Sections 36-44-9 and 36-44-20;

(R) If the plan proposes to include in the tax allocation increment ad valorem taxes levied by a board of education, the plan shall contain a school system impact analysis addressing the financial and operational impact on the school system of the proposed redevelopment, including but not limited to an estimate

of the number of net new public school students that could be anticipated as redevelopment occurs; the location of school facilities within the proposed redevelopment area; an estimate of educational special purpose local option sales taxes projected to be generated by the proposed redevelopment, if any; and a projection of the average value of residential properties resulting from redevelopment compared to current property values in the redevelopment area; and

(S) Includes such other information as may be required by resolution of the political subdivision whose area of operation includes the proposed redevelopment area.

(10) "Resolution" means a resolution or ordinance by which a local legislative body takes official legislative action and any duly adopted amendment thereto.

(11) "Special fund" means the fund provided for in subsection (c) of Code Section 36-44-11.

(12) "Tax allocation bonds" means one or more series of bonds, notes, or other obligations issued by a political subdivision to finance, wholly or partly, redevelopment costs within a tax allocation district and which are issued on the basis of pledging for the payment or security for payment of such bonds positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, as determined by the political subdivision subject to the limitations of Code Sections 36-44-9 and 36-44-20. Tax allocation bonds shall not constitute debt within the meaning of Article IX, Section V of the Constitution.

(13) "Tax allocation district" means a contiguous geographic area within a redevelopment area which is defined and created by resolution of the local legislative body of a political subdivision pursuant to subparagraph (B) of paragraph (3) of Code Section 36-44-8 for the purpose of issuing tax allocation bonds to finance, wholly or partly, redevelopment costs within the area.

(14) "Tax allocation increment" means that amount obtained by multiplying the total ad valorem property taxes, determined as provided in Code Section 36-44-9, levied within a tax allocation district in any year by a fraction having a numerator equal to that year's taxable value of all taxable property subject to ad valorem property taxes within the tax allocation district minus the tax allocation increment base and a denominator equal to that year's taxable value of all taxable property subject to ad valorem property taxes within the tax allocation district. In any year, a tax allocation

increment is "positive" if the tax allocation increment base is less than that year's taxable value of all taxable property subject to ad valorem property taxes and "negative" if such base exceeds such taxable value.

(15) "Tax allocation increment base" means the taxable value of all taxable property subject to ad valorem property taxes, as certified by the state revenue commissioner, located within a tax allocation district on the effective date such district is created pursuant to Code Section 36-44-8.

(16) "Taxable property" means all real and personal property subject to ad valorem taxation by a political subdivision, including property subject to local ad valorem taxation for educational purposes.

(17) "Taxable value" means the current assessed value of taxable property as shown on the tax digest of the county in which the property is located. (Code 1981, § 36-44-3, enacted by Ga. L. 2009, p. 158, § 2/HB 63; Ga. L. 2010, p. 878, § 36/HB 1387; Ga. L. 2011, p. 752, § 36/HB 142; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 141, § 36/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "United States Bureau of the Census" for "U.S. Bureau of the Census" in paragraph (7); and revised punctuation in paragraph (10).

36-44-9. Computing tax allocation increments; property tax included; use of tax funds.

JUDICIAL DECISIONS

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

Provisions Applicable to Counties and Municipal Corporations

CHAPTER 60

GENERAL PROVISIONS

Sec.
36-60-6. Utilization of federal work authorization program; "employee" defined; issuance of license; evidence of state licensure; annual reporting; standardized form affidavit; violation; investigations.
36-60-11. Attorney General to receive a copy of any submission to the United States Department of Justice pursuant to federal Voting Rights Act of 1965 [Repealed].
36-60-13. Multiyear lease, purchase, or lease-purchase contracts.
36-60-17. Water supplier's cut off of water to property because of indebtedness of prior owner, occupant, or lessee prohibited; records required; statement of past due amounts; limited liens for unpaid charges for water, gas, sewerage service, or electricity.
36-60-17.2. Limited exemption from storm water fees.
36-60-24. Sale or use or ignition of consumer fireworks products.
36-60-25. Certificates of public necessity and convenience and medallions for taxicabs.

36-60-3. Restriction of adult bookstores and movie houses to certain areas.

Law reviews. — For article, "Evil Angel Eulogy: Reflections on the Passing of the Obscenity Defense in Copyright," see 20 J. Intell. Prop. L. 209 (2013).

36-60-6. Utilization of federal work authorization program; "employee" defined; issuance of license; evidence of state licensure; annual reporting; standardized form affidavit; violation; investigations.

(a) Every private employer with more than ten employees shall register with and utilize the federal work authorization program, as defined by Code Section 13-10-90. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(b) For purposes of this Code section, the term "employee" shall have the same meaning as set forth in subparagraph (A) of paragraph (1.1) of Code Section 48-13-5, provided that such person is also employed to work not less than 35 hours per week.

(c) Before any county or municipal corporation issues a business license, occupational tax certificate, or other document required to operate a business to any person engaged in a profession or business required to be licensed by the state under Title 43, the person shall provide evidence of such licensure to the appropriate agency of the county or municipal corporation that issues business licenses. No business license, occupational tax certificate, or other document required to operate a business shall be issued to any person subject to licensure under Title 43 without evidence of such licensure being presented.

(d)(1) Before any county or municipal corporation issues a business license, occupational tax certificate, or other document required to operate a business to any person, the person shall provide evidence that he or she is authorized to use the federal work authorization program or evidence that the provisions of this Code section do not apply. Evidence of such use shall be in the form of an affidavit as provided by the Attorney General in subsection (f) of this Code section attesting that he or she utilizes the federal work authorization program in accordance with federal regulations or that he or she employs fewer than 11 employees or otherwise does not fall within the requirements of this Code section. Whether an employer is exempt from using the federal work authorization program as required by this Code section shall be determined by the number of employees employed by such employer on January 1 of the year during which the affidavit is submitted. The affidavit shall include the employer's federally assigned employment eligibility verification system user number and the date of authority for use. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(2) Upon satisfying the requirements of paragraph (1) of this subsection, for all subsequent renewals of a business license, occupation tax certificate, or other document, the person shall submit to the county or municipality his or her federal work authorization user number or assert that he or she is exempt from this requirement, provided that the federal work authorization user number provided for the renewal is the same federal work authorization user number as provided in the affidavit under paragraph (1) of this subsection. If the federal work authorization user number is different than the federal work authorization user number provided in the affidavit under paragraph (1) of this subsection, then the person shall be subject to the requirements of subsection (g) of this Code section.

(e) Counties and municipal corporations subject to the requirements of this Code section shall provide an annual report to the Department

of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this Code section. Subject to funding, the Department of Audits and Accounts shall annually conduct an audit of no fewer than 20 percent of such reporting agencies.

(f) In order to assist private businesses and counties and municipal corporations in complying with the provisions of this Code section, the Attorney General shall provide a standardized form affidavit which shall be used as acceptable evidence demonstrating use of the federal employment eligibility verification system or that the provisions of subsection (b) of this Code section do not apply to the applicant. The form affidavit shall be posted by the Attorney General on the Department of Law's official website no later than January 1, 2012.

(g) Once an applicant for a business license, occupational tax certificate, or other document required to operate a business has submitted an affidavit with a federally assigned employment eligibility verification system user number, he or she shall not be authorized to submit a renewal application using a new or different federally assigned employment eligibility verification system user number, unless accompanied by a sworn document explaining the reason such applicant obtained a new or different federally assigned employment eligibility verification system user number.

(h) Any person presenting false or misleading evidence of state licensure shall be guilty of a misdemeanor. Any government official or employee knowingly acting in violation of this Code section shall be guilty of a misdemeanor; provided, however, that any person who knowingly submits a false or misleading affidavit pursuant to this Code section shall be guilty of submitting a false document in violation of Code Section 16-10-20. It shall be a defense to a violation of this Code section that such person acted in good faith and made a reasonable attempt to comply with the requirements of this Code section.

(i) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(j) The Attorney General shall be authorized to conduct an investigation and bring any criminal or civil action he or she deems necessary to ensure compliance with the provisions of this Code section. The Attorney General shall provide an employer who is found to have committed a good faith violation of this Code section 30 days to demonstrate to the Attorney General that such employer has come into compliance with this Code section. During the course of any investigation of violations of this Code section, the Attorney General shall also investigate potential violations of Code Section 16-9-121.1 by employees that may have led to violations of this Code section. (Code 1981,

§ 36-60-6, enacted by Ga. L. 1992, p. 1553, § 1; Ga. L. 2011, p. 794, § 12/HB 87; Ga. L. 2013, p. 111, § 4/SB 160.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions of subsection (d) as paragraph (d)(1); deleted "or renews" following "corporation issues" near the beginning of the first sentence of paragraph (d)(1); added paragraph (d)(2); substituted the present provisions of subsection (e) for the former provisions, which read: "Beginning December 31, 2012, and annually thereafter, any county or municipal corporation issuing or renewing a business license, occupational tax certificate, or other document required to operate a business shall provide to the Department of Audits and Accounts a report demonstrating that such county or municipality is acting in compliance with the provisions of this Code section. This annual report shall identify each license or certificate issued by the agency in the preceding 12 months and include the name of the person and business issued a license or other document and his or her federally assigned employment eligibility verification system user number as provided in the affidavit submitted at the time of application. Subject to funding, the Department of Audits and Accounts shall annually conduct an audit of no fewer than 20 percent of such reporting agencies."; and substituted "affidavit which shall" for "affidavit which may" in the middle of the first sentence of subsection (f).

Editor's notes. — Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides that: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

36-60-11. Attorney General to receive a copy of any submission to the United States Department of Justice pursuant to federal Voting Rights Act of 1965.

Reserved. Repealed by Ga. L. 2015, p. 385, § 6-6/HB 252.

Editor's notes. — This Code section was based on Code 1981, § 36-60-11, enacted by Ga. L. 1984, p. 1432, § 1.

Ga. L. 2015, p. 385, § 1-1/HB 252, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

36-60-13. Multiyear lease, purchase, or lease-purchase contracts.

(a) Each county or municipality in this state shall be authorized to enter into multiyear lease, purchase, or lease-purchase contracts of all kinds for the acquisition of goods, materials, real and personal property, services, and supplies, provided that any such contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the county or municipality at the close of the calendar or fiscal year in which it was executed and at the close of

each succeeding calendar or fiscal year for which it may be renewed as provided in this Code section;

(2) The contract may provide for automatic renewal unless positive action is taken by the county or municipality to terminate such contract, and the nature of such action shall be determined by the county or municipality and specified in the contract;

(3) The contract shall state the total obligation of the county or municipality for the calendar or fiscal year of execution and shall further state the total obligation which will be incurred in each calendar or fiscal year renewal term, if renewed; and

(4) The contract shall provide that title to any supplies, materials, equipment, or other personal property shall remain in the vendor until fully paid for by the county or municipality.

(b) In addition to the provisions enumerated in subsection (a) of this Code section, any contract authorized by this Code section may include:

(1) A provision which requires that the contract will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the county or municipality under the contract; or

(2) Any other provision reasonably necessary to protect the interests of the county or municipality.

(c) Any contract developed under this Code section containing the provisions enumerated in subsection (a) of this Code section shall be deemed to obligate the county or municipality only for those sums payable during the calendar or fiscal year of execution or, in the event of a renewal by the county or municipality, for those sums payable in the individual calendar or fiscal year renewal term.

(d) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the county or municipality for the payment of any sum beyond the calendar or fiscal year of execution or, in the event of a renewal, beyond the calendar or fiscal year of such renewal.

(e) No contract developed and executed pursuant to this Code section may be delivered if the principal portion of such contract, when added to the amount of debt incurred by any county or municipality pursuant to Article IX, Section V, Paragraph I of the Constitution of Georgia, exceeds 10 percent of the assessed value of all taxable property within such county or municipality.

(f) No contract developed and executed pursuant to this Code section may be delivered if the real or personal property being so financed has been the subject of a referendum which failed to receive the approval of

the voters of the county or municipality within the immediately preceding four calendar years, unless such real or personal property is required to be financed pursuant to a federal or state court order, or imminent threat thereof, as certified by the governing authority of the county or municipality.

(g) No contract developed and executed pursuant to this Code section with respect to the acquisition of real property may be delivered unless a public hearing has been held by the county or municipality after two weeks' notice published in a newspaper of general circulation within the county or municipality.

(h)(1) On or after July 1, 2000, no contract developed and executed or renewed, refinanced, or restructured pursuant to this Code section with respect to real property may be delivered if the lesser of either of the following is exceeded:

(A) The average annual payments on the aggregate of all such outstanding contracts exceed 7.5 percent of the governmental fund revenues of the county or municipality for the calendar year preceding the delivery of such contract plus any available special county 1 percent sales and use tax proceeds collected pursuant to Code Section 48-8-111; or

(B) The outstanding principal balance on the aggregate of all such outstanding contracts exceeds $25 million; provided, however, that with respect to any county or municipality in which, prior to July 1, 2000, the outstanding principal balance on the aggregate of outstanding contracts exceeds $25 million, such outstanding contracts may be renewed, refinanced, or restructured, but no new contracts shall be developed and executed until the outstanding principal balance on such outstanding contracts has been reduced so that the $25 million limitation of this subparagraph, or the limitation in subparagraph (A) of this paragraph, whichever is lower, is not exceeded.

(2) Paragraph (1) of this subsection shall not apply to contracts developed and executed or renewed, refinanced, or restructured pursuant to this Code section which are for projects or facilities:

(A) For the housing of court services, where any other state law or laws authorize the project or facility to be financed and paid for from the collection of fines rather than from tax revenues; or

(B) Which have been previously approved in the most recent referendum calling for the levy of a special county 1 percent sales and use tax pursuant to Part 1 of Article 3 of Chapter 8 of Title 48.

(i) Any such contract may provide for the payment by the county or municipality of interest or the allocation of a portion of the contract

payment to interest, provided that the contract is in compliance with this Code section.

(j) Nothing in this Code section shall restrict counties or municipalities from executing reasonable contracts arising out of their proprietary functions. (Code 1981, § 36-60-13, enacted by Ga. L. 1988, p. 1954, § 1; Ga. L. 1996, p. 441, § 1; Ga. L. 2000, p. 1443, § 1; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 272, § 1/HB 473.)

The 2013 amendment, effective July 1, 2013, inserted "or fiscal" throughout subsections (a), (c), and (d).

Law reviews. — For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

36-60-17. Water supplier's cut off of water to property because of indebtedness of prior owner, occupant, or lessee prohibited; records required; statement of past due amounts; limited liens for unpaid charges for water, gas, sewerage service, or electricity.

(a) No public or private water supplier shall refuse to supply water to any single or multifamily residential property for which water has been furnished through the use of a separate water meter for each residential unit on application of the owner or new tenant of such property because of the indebtedness of a prior owner, prior occupant, or prior lessee to the water supplier for water previously furnished to such property.

(b) For each new or current account to supply water, the public and private water suppliers shall maintain a record of identifying information on the applicant for the water service and shall seek reimbursement of unpaid charges for water service furnished initially from the person who incurred the charges.

(c)(1) Any real property owner or tenant, person having executed a contract for the purchase or occupancy of real property, attorney closing a real estate transaction for the purchase of real property, or lender considering the loan of funds to be secured by real property shall be entitled upon request to a statement from a public or private water supplier setting forth the amount of water charges currently and past due and any late charges and interest applicable for water supplied to such property. Such request shall:

(A) Be in writing;

(B) State the address of the real property for which water was supplied;

(C) Be delivered to the billing address of the public or private water supplier by certified mail, return receipt requested, statutory

overnight delivery, or electronic means if electronic communication is permitted by such supplier; and

(D) State a return address or e-mail address to which the statement reflecting the moneys owed is to be directed.

(2) Any request transmitted by electronic means shall be considered received on the first business day following such transmission.

(3) The public or private water supplier shall furnish such statement to the requestor by certified mail, return receipt requested, statutory overnight delivery, or electronic means if electronic communication is provided by the requestor within ten business days of receipt of such request. Such supplier may charge a fee not to exceed $10.00 to provide the requested information.

(4) The failure of the public or private water supplier to provide such statement within such ten business day period shall:

(A) Cause any lien for unpaid charges provided by this Code section to be extinguished and to be of no force or effect as to the title acquired by the purchaser or lender, if any, and their respective successors and assigns in the transaction contemplated in connection with such request; and

(B) Prevent the public or private water supplier from denying water services to the new real property owner or tenant.

(5) The information specified in the public or private water supplier's statement shall be binding upon the public or private water supplier as of the date of the statement and for 30 days thereafter. When payment in full is tendered within such 30 day period, it shall extinguish any lien by operation of law which the public or private water supplier may have against such property.

(d) A public or private water supplier shall not impose a lien against real property to secure unpaid charges for water furnished unless the owner of such real property is the person who incurred the charges and shall not deny water services when such a lien has been extinguished.

(e) This Code section shall not apply to associations that are subject to Article 3 of Chapter 3 of Title 44 which supply water.

(f) A public or private supplier of gas, sewerage service, or electricity shall not impose a lien against real property to secure unpaid charges for gas, sewerage service, or electricity unless the owner of such real property is the person who incurred the charges. (Code 1981, § 36-60-17, enacted by Ga. L. 1994, p. 1957, § 1; Ga. L. 2016, p. 240, § 1/SB 206.)

The 2016 amendment, effective July 1, 2016, in subsection (a), near the beginning, substituted "property for" for "property to", near the middle, substituted "tenant of such property" for "resident tenant of the premises", and, at the end, substituted "property" for "premises"; in subsection (b), substituted "water, the public and private water suppliers shall maintain a record of identifying information on the applicant for" for "water to any premises or property, the public or private water supplier shall maintain a record of identifying information on the user of"; added subsection (c); redesignated former subsection (c) as present subsection (d); in subsection (d), added "and shall not deny water services when such a lien has been extinguished" at the end; added subsection (e); and redesignated former subsection (d) as present subsection (f).

36-60-17.2. Limited exemption from storm water fees.

Land located within a railroad's right of way and covered with ballast and rail shall be exempt from any fees imposed by any county or municipality for the management, collection, or disposal of storm water; provided, however, that railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from storm-water fees. (Code 1981, § 36-60-17.2, enacted by Ga. L. 2018, p. 944, § 1/HB 735.)

Effective date. — This Code section became effective July 1, 2018.

36-60-24. Sale or use or ignition of consumer fireworks products.

(a) The governing authority of a county or municipal corporation shall not prohibit the sale or use or ignition of consumer fireworks or other products or services which are lawful under Chapter 10 of Title 25, unless such prohibition is expressly authorized by general law.

(b) If the sale of a product or service is regulated by Chapter 10 of Title 25, the governing authority of a county or municipal corporation shall not enact additional regulation of the sale or use or ignition of such product or service, unless such additional regulation is expressly authorized by general law.

(c) Notwithstanding subsections (a) and (b) of this Code section, the governing authority of a county or municipal corporation may provide for permits or licenses for the sale or use of consumer fireworks as provided for under subsection (c) of Code Section 25-10-5.1.

(d) Notwithstanding subsections (a) and (b) of this Code section, the governing authority of a county or municipal corporation may further regulate the sale of consumer fireworks from temporary consumer fireworks retail sales stands until January 31, 2018.

(e) The governing authority of a county or municipal corporation shall not unreasonably delay or deny an application for a temporary consumer fireworks retail sales stand.

(f) For purposes of this subsection, the terms "consumer fireworks" and "consumer fireworks retail sales stand" shall have the same meanings as provided in Code Section 25-10-1.

(g) Any ordinance enacted before, on, or after July 1, 2006, by a county or municipal corporation in violation of this Code section is void. (Code 1981, § 36-60-24, enacted by Ga. L. 2006, p. 544, § 1/HB 304; Ga. L. 2015, p. 274, § 8/HB 110; Ga. L. 2016, p. 64, § 13/HB 727.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted "or use or explosion of consumer fireworks or products or services which" for "of products or services which products or services" in the middle and substituted "general law" for "the general law of the state" at the end; in subsection (b), substituted "Chapter 10 of Title 25" for "subsection (b) of Code Section 25-10-1" near the beginning and inserted "or use or explosion" near the middle; added subsections (c) through (f); and redesignated former subsection (c) as present subsection (g).

The 2016 amendment, effective April 26, 2016, in subsection (a), inserted "other" in the middle, and substituted "Chapter 10 of Title 25" for "subsection (b) of Code Section 25-10-1"; substituted "ignition" for "explosion" in subsections (a) and (b); in subsections (d) and (e), inserted "or municipal corporation"; and added "until January 31, 2018" at the end of subsection (d).

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 55 (2016).

36-60-25. Certificates of public necessity and convenience and medallions for taxicabs.

(a) Each county and municipal corporation may require the owner or operator of a taxicab to obtain a certificate of public necessity and convenience or medallion in order to operate such taxicab within the unincorporated areas of the county or within the corporate limits of the municipal corporation, respectively, and may exercise its authority under Code Section 48-13-9 to require such owners or operators to pay a regulatory fee to the county or municipal corporation. The General Assembly finds and declares that any county or municipality exercising the powers granted in this Code section is legitimately concerned with the qualifications and records of drivers of taxicabs; with the location, accessibility, and insured state of companies operating taxicabs; and with the safety and comfort of taxicabs. Without limitation, each such county or municipality may exercise the powers granted in this Code section by ordinance to the same extent as the ordinances reviewed by the Georgia Court of Appeals in the case of Hadley v. City of Atlanta, 232 Ga. App. 871, 875 (1998), and each certificate of public convenience and necessity issued under those ordinances shall remain in full force and effect.

(b) Each certificate of public necessity and convenience or medallion issued at any time by a county or municipal corporation shall be fully transferable pursuant to a purchase, gift, bequest, or acquisition of the stock or assets of a corporation to any person otherwise meeting the

requirements of the applicable local ordinance. Each such certificate of public necessity and convenience or medallion may be used as collateral to secure a loan and each lending institution making such a loan shall have all rights of secured parties with respect to such loan.

(c) Counties and municipalities which have adopted and have valid ordinances as of July 1, 2014, requiring taxicabs to have certificates of public necessity and convenience or medallions to operate within each such county or municipality may continue to require such certificates or medallions. Except as otherwise provided in this subsection, no county or municipality shall enact, adopt, or enforce any ordinance or regulation which requires taxicabs to have certificates of public necessity and convenience or medallions to operate within such county or municipality.

(d) No person shall operate a taxicab for the purpose of carrying or transporting passengers for hire unless such person has a for-hire license endorsement or private background check certification pursuant to Code Section 40-5-39. Counties and municipalities shall not impose further licensing requirements or background checks on such persons to operate taxicabs in their jurisdictions.

(e) As used in this subsection, the term "stage" means to stop, park, or otherwise place a vehicle for hire, other than a taxicab, in the loading or curbside area of any business for the purpose of soliciting a fare when such vehicle is not engaged in a prearranged round-trip or prearranged one-way fare. It shall be illegal to stage limousine carriers, as defined in paragraph (5) of Code Section 40-1-151, or ride share drivers, as defined in paragraph (3) of Code Section 40-1-190. A person who violates this subsection shall be guilty of a misdemeanor.

(f) No person shall operate a taxicab for the purpose of carrying or transporting passengers for hire unless such person maintains insurance from an insurance company licensed under Title 33, through a surplus line broker licensed under Title 33, or is qualified as a self-insurer pursuant to Code Section 33-34-5.1. (Code 1981, § 36-60-25, enacted by Ga. L. 2007, p. 677, § 1/HB 519; Ga. L. 2015, p. 1262, § 1/HB 225.)

The 2015 amendment, effective May 6, 2015, deleted "or vehicle for hire" following "taxicab" and deleted "and other vehicles for hire" following "taxicabs" throughout subsection (a); and added subsections (c) through (f).

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 213 (2015). For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

JUDICIAL DECISIONS

Impact of 2015 amendment. — Dismissal of the city taxi cab drivers' complaint for failure to state a cause of action that the 2015 amendment of O.C.G.A.

§ 36-60-25(a) resulted in an unconstitutional taking and inverse condemnation was affirmed because no law prohibited the city from increasing the Certificates of Public Necessity and Convenience (CPNC) limit and no property interest the drivers may have in their respective CPNCs extended to exclusivity or a limited supply of CPNCs. Abramyan v. State of Ga., 301 Ga. 308, 800 S.E.2d 366 (2017).

No inverse condemnation shown. — Taxicabs have been the subject of frequent and intensive regulation in the State of Georgia, and O.C.G.A. § 36-60-25(a) does not take business property for a public use, the statute merely requires an already regulated business to adjust its property to the new law. Abramyan v. State of Ga., 301 Ga. 308, 800 S.E.2d 366 (2017).

CHAPTER 61

URBAN REDEVELOPMENT

Sec.

36-61-2. Definitions.
36-61-3. Legislative findings and declaration of necessity.
36-61-4. Encouragement of private enterprise.
36-61-5. Resolution of necessity prerequisite to exercise of powers.
36-61-6. Formulation of workable program.
36-61-7. Preparation of redevelopment plan; approval; modification; effect of approval.
36-61-8. Powers of municipalities and counties generally.
36-61-10. Disposal of property in redevelopment area generally; notice and bidding procedures; exchange with veterans' organization; temporary operation of property.
36-61-12. Issuance of bonds; payment; tax exemption; form; terms; signatures; negotiability; effect of recitation on bonds.
36-61-14. Exemption of property from execution, levy, and sale; tax exemption.
36-61-16. Assistance by public bodies generally; powers of public bodies; powers of municipalities and counties.
36-61-17. Exercise of redevelopment powers by municipalities and counties; delegation to redevelopment agency or housing authority.

36-61-2. Definitions.

As used in this chapter, the term:

(1) "Agency" or "urban redevelopment agency" means a public agency created by Code Section 36-61-18.

(2) "Area of operation" means the area within the corporate limits of the municipality or county and the area within five miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated municipality or another county unless a resolution is adopted by the governing body of such other municipality or county declaring a need therefor.

(3) "Board" or "commission" means a board, commission, department, division, office, body, or other unit of the municipality or county.

(4) "Bonds" means any bonds (including refunding bonds), notes, interim certificates, certificates of indebtedness, debentures, or other obligations.

(5) "Clerk" means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.

(6) "County" means any county in this state.

(7) "Downtown development authority" means an authority created pursuant to Chapter 42 of this title.

(8) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Housing authority" means a housing authority created by and established pursuant to Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law."

(10) "Local governing body" means the council or other legislative body charged with governing the municipality and the board of commissioners or governing authority of the county.

(11) "Mayor" means the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

(12) "Municipality" means any incorporated city or town in this state.

(13) "Obligee" includes any bondholder, agents, or trustees for any bondholders, or any lessor demising to the municipality or county property used in connection with an urban redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality or county.

(14) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(15) "Pocket of blight" means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age, or obsolescence; inadequate provision for ventilation, light, air, sanitation, or open spaces; high density of population and overcrowding; existence of conditions which endanger life or property by fire and other causes; or any combination of such factors, are conducive to ill

health, transmission of disease, infant mortality, juvenile delinquency, or crime and detrimental to the public health, safety, morals, or welfare. Pocket of blight also means an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures; predominance of defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; the existence of conditions which endanger life or property by fire and other causes; having development impaired by airport or transportation noise or other environmental hazards; or any combination of such factors, substantially impairs or arrests the sound growth of a municipality or county, retards the provisions of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(16) "Pocket of blight clearance and redevelopment" may include:

(A) Acquisition of a pocket of blight or portion thereof;

(B) Rehabilitation or demolition and removal of buildings and improvements;

(C) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter in accordance with the urban redevelopment plan; and

(D) Making the land available for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality or county itself, at its fair value for uses in accordance with the urban redevelopment plan.

(17) "Public body" means the state or any municipality, county, board, commission, authority, district, housing authority, urban redevelopment agency, or other subdivision or public body of the state.

(18) "Real property" includes all lands, including improvements and fixtures thereon and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, right, and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise.

(19) "Rehabilitation" or "conservation" may include the restoration and redevelopment of a pocket of blight or portion thereof, in accordance with an urban redevelopment plan, by:

(A) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(B) Acquisition of real property and rehabilitation or demolition and removal of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary, or unsafe conditions, to lessen or increase density, to reduce traffic hazards, to eliminate obsolete or other uses detrimental to the public welfare, to otherwise remove or prevent the spread of pockets of blight or deterioration, or to provide land for needed public facilities or improvements, including, but not limited to, surface transportation projects;

(C) Installation, construction, or reconstruction of streets, transit facilities and improvements, sidewalks, streetscapes, trails, bicycle facilities, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter; and

(D) The disposition of any property acquired in such urban redevelopment area, including sale, initial leasing or retention by the municipality or county itself, at its fair value for uses in accordance with the urban redevelopment plan.

(20) "Slum clearance and redevelopment" may include:

(A) Acquisition of a slum area or portion thereof;

(B) Rehabilitation or demolition and removal of buildings and improvements;

(C) Installation, construction, or reconstruction of streets, transit facilities, sidewalks, streetscapes, trails, bicycle facilities, utilities, parks, playgrounds, and other public facilities and improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter in accordance with the urban redevelopment plan; and

(D) Making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality or county itself) at its fair value for uses in accordance with the urban redevelopment plan.

(21) "Sponsoring local government" means the municipality or county which approves and is, directly or indirectly, providing the greatest percentage of the public funding, exclusive of federal funding, for a surface transportation project.

(22) "Surface transportation project" means a project for public improvement and any related public facilities which is planned to impact 10,000 or more acres and at least ten transit miles within the area of operation of the sponsoring local government, including any

related facilities, systems, parks, trails, streets, greenspace, and any other integrated public or private development features included within any adopted infrastructure or transportation plan, urban redevelopment plan, strategic implementation plan, redevelopment plan, workable programs, or comprehensive plans; provided that the location of such surface transportation project is wholly within a county or counties that have approved a referendum pursuant to Section 24 of an Act creating the Metropolitan Atlanta Rapid Transit Authority, approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended; and provided, further, that the project is within one-half mile of a transportation/communications/utilities corridor, which has been designated by the local governing body on or before January 1, 2015, or within the boundaries of a tax allocation district authorized under the provisions of Chapter 44 of this title in effect as of January 1, 2015.

(23) "Urban redevelopment area" means a pocket of blight which the local governing body designates as appropriate for an urban redevelopment project.

(24) "Urban redevelopment plan" means a plan, as it exists from time to time, for an urban redevelopment project, which plan shall:

(A) Conform to the general plan for the municipality or county as a whole; and

(B) Be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban redevelopment area; zoning and planning changes, if any; land uses; maximum densities; building requirements; and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(25) "Urban redevelopment project" may include undertakings or activities of a municipality or county in an urban redevelopment area for the elimination and for the prevention of the development or spread of pockets of blight and may involve pocket of blight clearance and redevelopment in an urban redevelopment area, rehabilitation or conservation in an urban redevelopment area, the implementation of public improvements, including, but not limited to, surface transportation projects, or any combination or part thereof, in accordance with an urban redevelopment plan. Although the power of eminent domain may not be exercised for the following purposes, such undertakings or activities may include:

(A) Acquisition, without regard to any requirement that the area be a pocket of blight, of air rights in an area consisting of lands and

highways, railway or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area and over which air rights sites are to be developed for the elimination of such blighting influences and for the provision of housing and related facilities and uses designed for, and limited primarily to, families and individuals of low or moderate income; and

(B) Construction of foundations and platforms necessary for the provision of air rights sites of housing and related facilities and uses designed for, and limited primarily to, families and individuals of low or moderate income or construction of foundations necessary for the provision of air rights sites for development of nonresidential facilities. (Ga. L. 1955, p. 354, § 19; Ga. L. 1963, p. 644, § 1; Ga. L. 1971, p. 445, §§ 3-5; Ga. L. 1976, p. 946, §§ 2, 3; Ga. L. 1982, p. 3, § 36; Ga. L. 1992, p. 2533, §§ 11, 12; Ga. L. 2015, p. 1318, § 1/HB 174; Ga. L. 2015, p. 1329, § 2/SB 4; Ga. L. 2016, p. 864, § 36/HB 737.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, throughout this Code section, substituted "pocket of blight" for "slum area", substituted "pockets of blight" for "slum" and "slums"; added paragraphs (15) and (16); redesignated former paragraphs (15) through (17) as present paragraphs (17) through (19), respectively; deleted former paragraphs (18) and (19), which read: "(18) 'Slum area' means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age, or obsolescence; inadequate provision for ventilation, light, air, sanitation, or open spaces; high density of population and overcrowding; existence of conditions which endanger life or property by fire and other causes; or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime and is detrimental to the public health, safety, morals, or welfare. 'Slum area' also means an area which by reason of the presence of a substantial number of slum, deteriorated, or deteriorating structures; predominance of defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; the existence of conditions which endanger life or property by fire and other causes; by having development impaired by airport or transportation noise or by other environmental hazards; or any combination of such factors substantially impairs or arrests the sound growth of a municipality or county, retards the provisions of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

"(19) 'Slum clearance and redevelopment' may include:

"(A) Acquisition of a slum area or portion thereof;

"(B) Rehabilitation or demolition and removal of buildings and improvements;

"(C) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter in accordance with the urban redevelopment plan; and

"(D) Making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality or county itself) at its fair

value for uses in accordance with the urban redevelopment plan."; and substituted "pocket of blight" for "slum or blighted area" near the beginning of subparagraph (22)(A). The second 2015 amendment, effective July 1, 2015, in subparagraph (17)(B), inserted "or increase" near the middle and added "or improvements, including, but not limited to, surface transportation projects" at the end and inserted "transit facilities and improvements, sidewalks, streetscapes, trails, bicycle facilities," in the middle of subparagraph (17)(C); in subparagraph (19)(C), inserted "transit facilities, sidewalks, streetscapes, trails, bicycle facilities," and inserted "other public facilities and"; added paragraph (20); redesignated former paragraphs (20), (21), and (22) as present paragraphs (22), (23), and (24), respectively; and in paragraph (24), in the introductory matter, inserted "the implementation of public improvements, including, but not limited to, surface transportation projects," near the middle, and substituted "for the following purposes" for "such purposes" near the end. See the Code Commission note regarding the effect of these amendments.

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised punctuation in the second sentence of paragraph (15).

Code Commission notes. — Pursuant to Code Section 28-9-3, in 2015, the amendment of paragraph (19) of this Code section by Ga. L. 2015, p. 1318, § 1/HB 174, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 1329, § 2/SB 4, due to irreconcilable conflict.

Pursuant to Code Section 28-9-5, in 2015, former paragraphs (19) through (24) were redesignated as present paragraphs (20) through (25), respectively, to maintain alphabetical order.

36-61-3. Legislative findings and declaration of necessity.

(a) It is found and declared that there exist in municipalities and counties of this state pockets of blight, as defined in paragraph (15) of Code Section 36-61-2, which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of this state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities and counties, retards the provision of housing accommodations, aggravates traffic problems, and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of pockets of blight is a matter of state policy and state concern, in order that this state and its municipalities and counties shall not continue to be endangered by areas which are local centers of disease, promote juvenile delinquency, and, while contributing little to the tax income of this state and its municipalities and counties, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

(b) It is further found and declared that certain pockets of blight or portions thereof may require acquisition, clearance, and disposition, subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that the other areas or

portions thereof, through the means provided in this chapter, may be susceptible of conservation or rehabilitation in such a manner that the conditions and evils enumerated in subsection (a) of this Code section may be eliminated, remedied, or prevented and that, to the extent that is feasible, salvable pockets of blight should be conserved and rehabilitated through voluntary action and the regulatory process.

(c) It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain may be exercised. The necessity, in the public interest, for the provisions enacted in this chapter is declared as a matter of legislative determination. (Ga. L. 1955, p. 354, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 2015, p. 1318, § 2/HB 174.)

The 2015 amendment, effective July 1, 2016, substituted "pockets of blight" for "slum areas" throughout subsections (a) and (b); and, in subsection (a), substituted "paragraph (15)" for "paragraph (18)" near the beginning, substituted "pockets of blight" for "slums" near the end, and substituted "this state" for "the state" twice near the end.

36-61-4. Encouragement of private enterprise.

(a) A municipality or county, to the greatest extent it determines to be feasible in carrying out the provisions of this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality or county as a whole, to the rehabilitation or redevelopment of the urban redevelopment area by private enterprise. A municipality or county shall give consideration to this objective in exercising its powers under this chapter, including: the formulation of a workable program; the approval of urban redevelopment plans consistent with the general plan for the municipality or county; the adoption and enforcement of ordinances as provided for in Code Section 36-61-11; the exercise of its zoning powers; the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements; the disposition of any property acquired; and the provision of necessary public improvements.

(b) Notwithstanding anything in this chapter or other provisions of law to the contrary, and in order to give effect to the encouragement of private enterprise contemplated in this Code section, the following shall apply to contracts and agreements for surface transportation projects entered into pursuant to this chapter:

(1) In addition to other methods of procurement authorized by law, the sponsoring local government, urban redevelopment agency, or other governing body shall be authorized to utilize the procedures of this chapter to provide for the planning, design, finance, construction, acquisition, leasing, operation, and maintenance of surface transpor-

tation projects. The provisions of this chapter shall be an alternative to such other methods to be exercised at the option of each sponsoring local government or public body;

(2) One or more public bodies may participate in the consideration and implementation of a surface transportation project at the discretion of the sponsoring local government. Where more than one public body agrees to participate in the consideration or implementation of a surface transportation project, the participants may designate one or more representatives of each such participating public body, as agreed to by the sponsoring local government or the urban redevelopment agency;

(3)(A) An urban redevelopment agency designated by the sponsoring local government may evaluate a project to determine the appropriate or desirable levels of public and private participation in planning, designing, financing, constructing, operating, maintaining, or facilitating, or any combination thereof, for the execution of such project. Such urban redevelopment agency may designate a public nonprofit, private corporation, body, or entity to perform this function and to otherwise perform the activities contemplated in this Code section.

(B) A sponsoring local government or an urban redevelopment agency shall be authorized to issue, individually or in sequenced stages, written requests for expressions of interest, qualifications, or proposals, or any combination thereof, or other similar methods of procurement or solicitation. Such requests shall indicate the scope of the project, the proposed public and private financial participation in the project, including, but not limited to, the rights, responsibilities, obligations, revenue sharing features, any lease, license, availability or other payment rights, and any other allocations of interests and federal and state income tax benefits in respect of real and personal property relating to a project. Such requests shall include the factors to be used in evaluating responses, the relative importance of any applicable evaluation factors, and other contractual terms and conditions expected, including any unique capabilities or qualifications that will be required of respondents, as determined in the sole discretion of the designated representative of the sponsoring local government. Public notice of such requests shall be made at least 30 days prior to the date set for the release of said request by posting a legal notice on the websites and weekly in the legal organ of the sponsoring local government and the public body implementing the project, in substantially the same manner utilized by such public bodies in order to solicit requests for proposals, with a copy of such notice provided simultaneously to each affected public body.

(C)(i) The public body implementing the project and the sponsoring local government, with the participation of any designated representatives of other participating public bodies as determined by the sponsoring local government, may engage in individual discussions and interviews with each respondent deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation as called for in such request. Repetitive interviews may be conducted. Any such interviews shall be deemed to be a part of the procurement process.

(ii)(I) At the conclusion of the final stage, on the basis of evaluation factors published in the request and all information developed in the selection process, the public body implementing the surface transportation project, in an open and public meeting subject to the provisions of Chapter 14 of Title 50, shall rank the proposals in accordance with the factors set forth in the request for proposal or invitation for bids.

(II) After ranking the proposals, the public body implementing the project shall begin negotiations with the first ranked private entity. If such public body and first ranked private entity do not reach a comprehensive agreement or interim agreement, such public body may conduct negotiations with the next ranked private entity. Such process shall continue until such public body either voluntarily abandons the process or executes a comprehensive agreement or interim agreement with a private entity. Negotiations conducted with one or more selected respondents pursuant to this Code section shall continue to be deemed an active procurement until the execution of the final, definitive agreement with the selected respondent or respondents.

(iii) The public body implementing the project shall select for approval the respondent offering the most satisfactory and advantageous contract terms for the project based upon a thorough assessment of any one or more of the following: experience and reputation with similar projects; engineering and design quality; value; projected savings during, before, or after construction; and the ability of the final project's characteristics to meet the goals of the sponsoring local government, consistent with applicable plans and programs. The fair market value of any property included as a part of the procurement may be based on the consideration of the above factors, but it shall not be less than the initial cost to obtain the property. Before making such selection, the designated representative shall consult in an open

and public meeting subject to the provisions of Chapter 14 of Title 50 with the representatives of any participating local governing authority, participating local authority, participating state agency, department, or authority, and affected local government. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request, the implementing public body may award contracts to more than one respondent. Should the implementing public body determine in writing that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the other respondents under consideration, a contract may be negotiated and awarded to that respondent.

(iv) Upon approval of the selection by the implementing public body, a contract or contracts not exceeding 50 years in duration may be entered into by the urban redevelopment agency or any one or more of the participating public bodies and the selected respondent or respondents. The private financial data or financial plans which qualify as trade secrets pursuant to Code Section 10-1-761 and paragraph (34) of subsection (a) of Code Section 50-18-72 provided by the respondents shall remain exempt from Code Section 50-18-72 during and after the conclusion of the related selection process.

(D) A dispute over the award of a contract under this chapter shall be resolved by the filing of a petition in the superior court of the county in which the sponsoring local government is located within 30 days of the awarding of such contract and shall be determined through the use of a special master appointed by the judge of the superior court of the county in which the sponsoring local government is located. The special master shall not be authorized to enjoin or otherwise delay or suspend the execution of the contract and any work to be performed under such contract. The decision of the special master with regard to such dispute shall be appealable for a de novo review to the superior court of the county in which the sponsoring local government is located within 30 days following the decision of the special master.

(E) Nothing in this chapter shall require the designated representatives, the sponsoring local government, the implementing public body, or any participating public body to continue negotiations or discussions arising out of any request or any other procurement initiated under the provisions of this Code section.

(F) Every public body shall be authorized to promulgate reasonable rules and regulations to assist in its evaluation of responses and to implement the purposes of this chapter; provided, however, that unsolicited proposals shall not be permitted;

(4) No public officer, employee, or member of any participating public body, with respect to contracts of such public body, or the General Assembly shall serve as an agent, lobbyist, or board member for any private entity directly or indirectly under a contract or negotiating a contract provided for by this chapter for one year after leaving his or her position as a public officer, employee, or member of the public body or the General Assembly; and

(5) Contracts entered into with a private enterprise in respect to the design, construction, operation, financing, or management of the public components of a surface transportation project shall not constitute the acquisition of property for a private use, nor shall such contracts be deemed a sale, lease, or other disposition of the related interests in property under any provisions of this chapter or other provision of applicable law, and such public components of a surface transportation project shall be deemed a public use for all purposes under applicable provisions of law, including, without limitation, Code Sections 36-61-9 and 36-61-10. (Ga. L. 1955, p. 354, § 3; Ga. L. 2015, p. 1329, § 3/SB 4; Ga. L. 2016, p. 864, § 36/HB 737.)

The 2015 amendment, effective July 1, 2015, designated the previously existing provisions of this Code section as subsection (a); and added subsection (b).

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, substituted "respondents pursuant" for "respondent pursuant" in the last sentence of subdivision (b)(3)(C)(ii)(II).

36-61-5. Resolution of necessity prerequisite to exercise of powers.

No municipality or county shall exercise any of the powers conferred upon municipalities and counties by this chapter until after its local governing body has adopted a resolution finding that:

(1) One or more pockets of blight exist in such municipality or county; and

(2) The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of the municipality or county. (Ga. L. 1955, p. 354, § 5; Ga. L. 2015, p. 1318, § 3/HB 174.)

The 2015 amendment, effective July 1, 2015, substituted "pockets of blight" for "slum areas" near the beginning of paragraph (1).

36-61-6. Formulation of workable program.

For the purposes of this chapter, a municipality or county may formulate a workable program for utilizing appropriate private and

public resources, including those specified in Code Section 36-61-11, to eliminate and prevent the development or spread of pockets of blight, to encourage needed urban rehabilitation, to provide for the redevelopment of pockets of blight, or to undertake such of the aforesaid activities or such other feasible municipal or county activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for the prevention of the spread of pockets of blight into areas of the municipality or county which are free from pockets of blight, through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation or conservation of pockets of blight or portions thereof by replanning, removing congestion, providing parks, playgrounds, and other public improvements, including without limitation surface transportation projects, encouraging voluntary rehabilitation, and compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of pockets of blight or portions thereof. (Ga. L. 1955, p. 354, § 4; Ga. L. 2015, p. 1318, § 4/HB 174; Ga. L. 2015, p. 1329, § 4/SB 4.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, throughout this Code section, substituted "pockets of blight" for "slums" and "slum areas", and, near the beginning of the first sentence, inserted a comma after "appropriate private and public resources". The second 2015 amendment, effective July 1, 2015, inserted ", including without limitation surface transportation projects" near the middle of the last sentence.

36-61-7. Preparation of redevelopment plan; approval; modification; effect of approval.

(a) A municipality or county shall not approve an urban redevelopment plan for an urban redevelopment area unless the governing body, by resolution, has determined such area to be a pocket of blight and designated such area as appropriate for an urban redevelopment project. Authority is vested in every municipality and county to prepare, to adopt, and to revise, from time to time, a general plan for the physical development of the municipality or county as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal and county planning activities, and to make available and to appropriate the necessary funds therefor. A municipality or county shall not acquire real property for an urban redevelopment project unless the local governing body has approved the urban redevelopment plan in accordance with subsection (d) of this Code section.

(b) The municipality or county may itself prepare or cause to be prepared an urban redevelopment plan; alternatively, any person or agency, public or private, may submit a plan to a municipality or county.

(c) The local governing body of the municipality or county shall hold or shall cause some agency of the municipality or county to hold a public hearing on an urban redevelopment plan or a substantial modification of an approved urban redevelopment plan, after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality or county. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban redevelopment area covered by the plan, and shall outline the general scope of the urban redevelopment project under consideration.

(d) Following such hearing, the local governing body may approve an urban redevelopment plan if it finds that:

(1) A feasible method exists for the relocation of families who will be displaced from the urban redevelopment area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such families;

(2) The urban redevelopment plan conforms to the general plan of the municipality or county as a whole; and

(3) The urban redevelopment plan will afford maximum opportunity, consistent with the sound needs of the municipality or county as a whole, for the rehabilitation or redevelopment of the urban redevelopment area by private enterprise.

(e) An urban redevelopment plan may be modified at any time, provided that, if modified after the lease or sale by the municipality or county of real property in the urban redevelopment project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser or his or her successor or successors in interest may be entitled to assert. Any proposed modification which will substantially change the urban redevelopment plan as previously approved by the local governing body shall be subject to the requirements of this Code section, including the requirement of a public hearing, before it may be approved.

(f) Upon the approval of an urban redevelopment plan by a municipality or county, the provisions of the plan with respect to the future use and building requirements applicable to the property covered by the plan shall be controlling with respect thereto. (Ga. L. 1955, p. 354, § 6; Ga. L. 1982, p. 3, § 36; Ga. L. 2015, p. 1318, § 5/HB 174.)

The 2015 amendment, effective July 1, 2015, substituted "pocket of blight" for "slum area" near the middle of the first sentence of subsection (a); and inserted "or her" near the end of the first sentence of subsection (e).

36-61-8. Powers of municipalities and counties generally.

Every municipality and every county shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others granted in this chapter:

(1) To undertake and carry out urban redevelopment projects within its area of operation; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate pocket of blight clearance and urban redevelopment information;

(2) To provide, to arrange, or to contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with an urban redevelopment project and to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements, provided that neither the municipality or county itself nor an urban redevelopment agency or housing authority or downtown development authority acting pursuant to an election under Code Section 36-61-17 shall provide, install, or construct any public utility of the same kind or character as an existing utility operating in the municipality or county if such existing utility is providing reasonably adequate and proper service, as determined by the Public Service Commission; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or to compliance with labor standards in the undertaking or carrying out of an urban redevelopment project, and to include, in any contract let in connection with such a project, provisions to fulfill such conditions as it may deem reasonable and appropriate;

(3) Within its area of operation, to enter upon any building or property in any urban redevelopment area in order to make surveys, appraisals, soundings, or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire, by purchase, lease, option, gift, grant, bequest, devise, or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality or county against any risks or hazards, and to pay premiums on any such insurance; and to enter into any contracts

necessary to effectuate the purposes of this chapter; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality or county or other public body exercising powers under this chapter in the exercise of such functions with respect to an urban redevelopment project, unless the General Assembly shall specifically so state;

(4) To invest any urban redevelopment project funds held in reserves or sinking funds or any such funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control; and to redeem such bonds as have been issued pursuant to Code Section 36-61-12 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled;

(5) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A municipality or county may include in any contract for financial assistance with the federal government for an urban redevelopment project such conditions imposed pursuant to federal law as the municipality or county may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(6) Within their area of operation, to make or have made all plans necessary to the carrying out of the purposes of this chapter and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation:

(A) A general plan for the locality as a whole;

(B) Urban redevelopment plans;

(C) Plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, to include but not to be limited to making loans and grants from funds received from the federal government, as well as from funds received from the repayment of such loans and interest thereon, to persons, public or private, owning private housing for the purpose of financing the rehabilitation of such housing;

(D) Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of

buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and

(E) Appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban redevelopment projects.

The municipality or county is authorized to develop, test, and report methods and techniques and to carry out demonstrations and other activities for the prevention and elimination of pockets of blight and to apply for, accept, and utilize grants of funds from the federal government for such purposes;

(7) To prepare plans and provide reasonable assistance for the relocation of families displaced from an urban redevelopment area, to the extent essential for acquiring possession of and clearing such area or parts thereof to permit the carrying out of the urban redevelopment project;

(8) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter and to levy taxes and assessments for such purposes; to close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; to plan or replan, zone, or rezone any part of the municipality or county or make exceptions from building regulations; and to enter into agreements, under Code Section 36-61-17, with a housing authority, a downtown development authority, or an urban redevelopment agency vested with urban redevelopment project powers, which agreements may extend for up to 50 years respecting action to be taken by such municipality or county pursuant to any of the powers granted by this chapter. The reasonable costs of removing, relocating, and rearranging public utility facilities within urban renewal areas may constitute a cost of carrying out the purposes of this chapter, and every municipality and county may, in their discretion, pay such reasonable costs or any portion thereof;

(9) Within their areas of operation, to organize, coordinate, and direct the administration of the provisions of this chapter as they apply to such municipality or county, in order that the objective of remedying pockets of blight and preventing the causes thereof within the municipality or county may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or county or to reorganize existing offices in order to carry out such purpose most effectively; and

(10) To exercise all or any part or combination of powers granted in this Code section. (Ga. L. 1955, p. 354, § 7; Ga. L. 1963, p. 644, § 2; Ga. L. 1976, p. 946, § 1; Ga. L. 1992, p. 2533, § 13; Ga. L. 2015, p. 1318, § 6/HB 174.)

The 2015 amendment, effective July 1, 2015, substituted "pocket of blight" for "slum" near the end of paragraph (1); substituted "pockets of blight" for "slums" near the end of the ending undesignated paragraph in paragraph (6); and, in paragraph (9), substituted "pockets of blight" for "slums" near the middle and substituted "; and" for a period at the end.

36-61-9. Power of eminent domain; conditions; title acquired.

JUDICIAL DECISIONS

Not applicable to conveyance of previously condemned property. — Even assuming the original condemnation proceeding was conducted pursuant to the Urban Redevelopment Law and that O.C.G.A. § 36-61-9 was applicable to it, the 2003 conveyance was not a re-taking by a municipality or county and thus the transaction was not governed by the requirements of § 36-61-9. By its terms, the statute applies to the original taking of property by eminent domain. The 2003 conveyance was, instead, a re-purposing of the property from that involved in the original taking. Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347 (2014).

36-61-10. Disposal of property in redevelopment area generally; notice and bidding procedures; exchange with veterans' organization; temporary operation of property.

(a) A municipality or county may sell, lease, or otherwise transfer real property in an urban redevelopment area or any interest therein acquired by it and may enter into contracts with respect thereto, for residential, recreational, commercial, industrial, or other uses or for public use; or the municipality or county may retain such property or interest for public use, in accordance with the urban redevelopment plan, subject to such covenants, conditions, and restrictions, including covenants running with the land and including the incorporation by reference therein of the provisions of an urban redevelopment plan or any part thereof, as it may deem to be in the public interest or necessary or desirable to assist in preventing the development or spread of future pockets of blight or to otherwise carry out the purposes of this chapter. Such sale, lease, other transfer, or retention and any agreement relating thereto may be made only after the approval of the urban redevelopment plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban redevelopment plan and may be obligated to comply with such other requirements as the municipality or county may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on the real property required by the urban redevelopment plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban redevelopment plan. In determining the fair value of real property for uses in accordance with the urban redevelopment

plan, a municipality or county shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality or county retaining the property; and the objectives of such plan for the prevention of the recurrence of pockets of blight. The municipality or county in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality or county until he or she has completed the construction of any and all improvements which he or she has obligated himself or herself to construct thereon. Real property acquired by a municipality or county which, in accordance with the provisions of the urban redevelopment plan, is to be transferred shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban redevelopment plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions, including the incorporation by reference therein of the provisions of an urban redevelopment plan or any part thereof, shall not prevent the filing of the contract or conveyance in the land records of the county in such manner as to afford actual or constructive notice thereof.

(b)(1) A municipality or county may dispose of real property in an urban redevelopment area to private persons only under such reasonable competitive bidding procedures as it shall prescribe, as are provided in this subsection or, solely with respect to and for the benefit of advancing surface transportation projects, as provided in Code Section 36-61-4. A municipality or county, by public notice by publication once each week for two consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under this Code section, may invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban redevelopment area or any part thereof. The notice shall identify the area or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in the notice. The municipality or county shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out and may negotiate with any persons for proposals for the purchase, lease, or other transfer of any real property acquired by the municipality or county in the urban redevelopment area. The municipality or county may accept such proposal as it deems to be in the public

interest and in furtherance of the purposes of this chapter. The municipality or county may execute contracts in accordance with subsection (a) of this Code section and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such contracts.

(2) Notwithstanding the provisions or requirements of this Code section, any municipality or county may exchange real property or land, whether vacant or improved, in any urban redevelopment area for real property or land, whether vacant or improved, owned by any post, barracks, encampment, chapter, subsidiary, or any other division or unit of any veterans' organization chartered by the United States Congress, provided such real property or land was owned by the veterans' organization on March 6, 1962, and, provided, further, that the municipality or county owning such urban redevelopment area desires to obtain the real property or land owned by the veterans' organization for civic improvements, including, but not limited to, the building of art theaters, stadiums, parks, playgrounds, auditoriums, civic theaters, and performing arts theaters.

(c) A municipality or county may temporarily operate and maintain real property acquired in an urban redevelopment area, pending the disposition of the property for redevelopment, without regard to subsection (a) of this Code section, for such uses and purposes as may be deemed desirable, even if such uses and purposes are not in conformity with the urban redevelopment plan. (Ga. L. 1955, p. 354, § 9; Ga. L. 1962, p. 702, § 1; Ga. L. 2015, p. 1318, § 7/HB 174; Ga. L. 2015, p. 1329, § 5/SB 4.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, in subsection (a), substituted "pockets of blight" for "slums" near the end of the first sentence, substituted "pockets of blight" for "slum areas" in the fifth sentence, and, in the sixth sentence, inserted "or she" twice and inserted "or herself". The second 2015 amendment, effective July 1, 2015, in paragraph (b)(1), in the first sentence, substituted "prescribe, as" for "prescribe or" near the middle, and added "or, solely with respect to and for the benefit of advancing surface transportation projects, as provided in Code Section 36-61-4" at the end.

36-61-12. Issuance of bonds; payment; tax exemption; form; terms; signatures; negotiability; effect of recitation on bonds.

(a) A municipality or county shall have power to issue bonds, in its discretion, from time to time, to finance the undertaking of any urban redevelopment project under this chapter, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban redevelopment projects and shall also have power to issue refunding bonds for the payment of retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income,

proceeds, revenues, and funds of the municipality or county derived from or held in connection with its undertaking and carrying out of urban redevelopment projects under this chapter; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban redevelopment projects of the municipality or county under this chapter, and by a mortgage of any such urban redevelopment projects or any part thereof, title to which is in the municipality, county, or redevelopment agency.

(b) Bonds issued under this Code section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this Code section shall be authorized by resolution or ordinance of the local governing body. They may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by the resolution of the local governing body or by the trust indenture or mortgage issued pursuant thereto.

(d) All revenue bonds, but not notes or other obligations, issued under this Code section shall be issued and validated under and in accordance with the procedure set forth in Article 3 of Chapter 82 of this title. The provisions of any resolution or ordinance authorizing the issuance of bonds under this Code section shall be a contract with every holder of such bonds and enforceable by any bondholder by mandamus or other appropriate action or proceeding at law or in equity.

(e) If any of the public officials of the municipality or county whose signatures appear on any bonds or coupons issued under this chapter cease to be such officials before the delivery of the bonds, such signatures, nevertheless, shall be valid and sufficient for all purposes, the same as if the officials had remained in office until the delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security

therefor, any such bond reciting in substance that it has been issued by the municipality or county in connection with an urban redevelopment project, as defined in paragraph (25) of Code Section 36-61-2, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with this chapter.

(g) Any urban redevelopment agency or housing authority which a municipality or county has elected to exercise powers under Code Section 36-61-17 may also issue bonds, as provided in this Code section, in the same manner as a municipality or county, except that such bonds shall be authorized and the terms and conditions thereof shall be prescribed by the commissioners of such urban redevelopment agency or housing authority in lieu of the local governing body. (Ga. L. 1955, p. 354, § 10; Ga. L. 1970, p. 115, § 1; Ga. L. 1980, p. 1352, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1993, p. 91, § 36; Ga. L. 2015, p. 1329, § 6/SB 4.)

The 2015 amendment, effective July 1, 2015, substituted "municipality, county, or redevelopment agency" for "municipality or county" at the end of the last sentence of subsection (a); substituted the present provisions of subsection (d) for the former provisions, which read: "Such bonds may be sold at not less than par at public sales held after notice published prior to such sales in a newspaper having a general circulation in the area of operation and in such other medium of publication as the municipality or county may determine or may be exchanged for other bonds on the basis of par. Such bonds may be sold to the federal government or to an institution insured by an agency of the federal government at private sale at not less than par and, in the event that less than all of the authorized principal amount of such bonds is sold to the federal government or to an institution insured by an agency of the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality or county, such cost not to exceed the interest cost to the municipality or county of the portion of the bonds sold to the federal government or to an institution insured by an agency of the federal government."; and substituted "paragraph (24)" for "paragraph (22)" in the middle of subsection (f).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "paragraph (25)" was substituted for "paragraph (24)" in the middle of subsection (f).

36-61-14. Exemption of property from execution, levy, and sale; tax exemption.

(a) All property of a municipality or county, including funds owned or held by it for the purposes of this chapter, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall judgment against a municipality or county be a charge or lien upon such property; provided, however, that this Code section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality or county on its rents, fees, grants, or revenues from urban redevelopment projects.

(b) The property of a municipality, county, or any other public body, acquired or held for the purpose of this chapter, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof. Such tax exemption shall terminate when the municipality or county sells, leases, or otherwise disposes of property in an urban redevelopment area to a purchaser or lessee who or which is not a public body. (Ga. L. 1955, p. 354, § 12; Ga. L. 2015, p. 1329, § 7/SB 4.)

The 2015 amendment, effective July 1, 2015, substituted "municipality, county, or any other public body," for "municipality or county," near the beginning of the first sentence of subsection (b).

36-61-16. Assistance by public bodies generally; powers of public bodies; powers of municipalities and counties.

(a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project located within the area in which it is authorized to act, any public body, upon such terms, with or without consideration, as it may determine, may:

(1) Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality or county;

(2) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this Code section;

(3) Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban redevelopment plan;

(4) Lend, grant, or contribute funds to a municipality or county;

(5) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or county or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban redevelopment project and other provisions allocating legal responsibility for matters arising under or in connection with transactions entered into pursuant to Code Section 36-61-4; and

(6) Cause public buildings and public facilities, including parks, trails, greenspace, playgrounds, recreational, community, education, transit, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan, replan, zone, or

rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the municipality or county.

If at any time title to or possession of any urban redevelopment project is held by any public body or governmental agency, other than the municipality or county, which is authorized by law to engage in the undertaking, carrying out, or administration of urban redevelopment projects, including any agency or instrumentality of the United States of America, the provisions of the agreements referred to in this subsection shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the terms "municipality" and "county" shall also include an urban redevelopment agency or a housing authority vested with all of the urban redevelopment project powers pursuant to Code Section 36-61-17.

(b) Any sale, conveyance, lease, or agreement provided for in this Code section may be made by a public body without appraisal, public notice, advertisement, or public bidding.

(c) For the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project of an urban redevelopment agency or a housing authority under this chapter, a municipality or county may, in addition to their other powers and upon such terms, with or without consideration, as they may determine, do and perform any or all of the actions or things which, by subsection (a) of this Code section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

(d) For the purposes of this Code section or for the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project of a municipality or county, such municipality or county may, in addition to any authority to issue bonds pursuant to Code Section 36-61-12, issue and sell its general obligation bonds. Any bonds issued by a municipality or county pursuant to this Code section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality and county for public purposes generally. (Ga. L. 1955, p. 354, § 13; Ga. L. 1982, p. 3, § 36; Ga. L. 2015, p. 1329, § 8/SB 4.)

The 2015 amendment, effective July 1, 2015, inserted "and other provisions allocating legal responsibility for matters arising under or in connection with transactions entered into pursuant to Code Section 36-61-4" near the end of paragraph (a)(5); and, in paragraph (a)(6), inserted "trails, greenspace," and "transit," near the beginning.

36-61-17. Exercise of redevelopment powers by municipalities and counties; delegation to redevelopment agency or housing authority.

(a) A municipality or county may itself exercise its "urban redevelopment project powers," as defined in subsection (b) of this Code section, or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban redevelopment agency created by Code Section 36-61-18 or by a housing authority, if one exists or is subsequently established in the community, or by an existing or subsequently established downtown development authority. In the event that the local governing body makes such determination, the urban redevelopment agency or the housing authority or downtown development authority, as the case may be, shall be vested with all of the "urban redevelopment project powers" of the municipality or county conferred in this chapter, in the same manner as though all such powers were conferred on the agency or authority instead of the municipality or county; and any public body may cooperate with the urban redevelopment agency or housing authority or the downtown development authority to the same extent that it could cooperate with the municipality or county itself if the municipality or county were exercising its urban redevelopment project powers. If the local governing body does not elect to make such determination, the municipality or county in its discretion may exercise its urban redevelopment project powers through a board or commissioner or through such officers of the municipality or county as the local governing body may by resolution determine.

(b) As used in this Code section, the term "urban redevelopment project powers" shall include all of the rights, powers, functions, duties, privileges, immunities, and exemptions granted to a municipality or county under this chapter, except the following:

(1) The power to determine an area to be a pocket of blight and to designate such area as appropriate for an urban redevelopment project;

(2) The power to approve and amend urban redevelopment plans;

(3) The power to establish a general plan for the locality as a whole;

(4) The power to formulate a workable program under Code Section 36-61-6;

(5) The powers, duties, and functions referred to in Code Section 36-61-11;

(6) The power to make the determinations and findings provided for in Code Section 36-61-4, Code Section 36-61-5, and subsection (d) of Code Section 36-61-7;

(7) The power to issue general obligation bonds; and

(8) The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in paragraph (8) of Code Section 36-61-8. (Ga. L. 1955, p. 354, § 16; Ga. L. 1982, p. 3, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 2533, § 15; Ga. L. 2015, p. 1318, § 8/HB 174.)

The 2015 amendment, effective July 1, 2015, substituted "pocket of blight" for "slum area" in the middle of paragraph (b)(1).

CHAPTER 62

DEVELOPMENT AUTHORITIES

Sec.
36-62-7. Operation of project by governmental units prohibited; sale or lease of property for operation.

36-62-1. Short title.

JUDICIAL DECISIONS

Cited in Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

36-62-2. Definitions.

JUDICIAL DECISIONS

Failure to meet characteristics of office building or hotel facility. — In a taxpayers' suit against a county and officials, the court upheld the grant of summary judgment to the county because the testimony of counsel for the taxpayers was insufficient to create an issue of material fact on the taxpayer's claims in regard to the tax-exempt status of the county development authority-owned properties as there was no evidence that any of the properties actually possessed the characteristics of an office building or hotel facility as defined in O.C.G.A. § 36-62-2. SJN Props., LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 770 S.E.2d 832 (2015).

36-62-3. Constitutional authority for chapter; finding of public purposes; tax exemption.

JUDICIAL DECISIONS

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a).

Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

Tax exempt status not shown. — In a taxpayer's suit against a county and officials, the court upheld the grant of summary judgment to the county because the testimony of the counsel for the taxpayers was insufficient to create an issue of material fact on the taxpayer's claims in regard to the tax-exempt status of the county development authority-owned properties as there was no evidence that any of the properties actually possessed the characteristics of an office building or hotel facility as defined in O.C.G.A. § 36-62-2. SJN Props., LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 770 S.E.2d 832 (2015).

36-62-6. Powers of authority generally.

Law reviews. — For annual survey on real property, see 69 Mercer L. Rev. 251 (2017).

JUDICIAL DECISIONS

Development authority not required to own or operate project to issue bonds. — Proposed bond transaction did not violate Ga. Const. 1983, Art. IX, Sec. VI, Para. I and O.C.G.A. § 36-82-66 of the Revenue Bond Law merely because the development authority would not own or operate the proposed stadium; the development authority could use bond proceeds for paying all or part of the cost of any project (O.C.G.A. § 36-62-6(a)(13)), not only those projects the authority developed, and the authority could pay the costs of another government entity's project pursuant to O.C.G.A. § 36-62-9. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616 (2015).

36-62-7. Operation of project by governmental units prohibited; sale or lease of property for operation.

No project acquired under this chapter shall be operated by an authority or any municipal corporation, county, or other governmental subdivision. Such a project shall be leased or sold to, or managed by, one or more persons, firms, or private corporations. Any disposition of real property by an authority pursuant to paragraph (7) of subsection (a) of Code Section 36-62-6 shall be made to one or more persons, firms, corporations, or governmental or public entities. If revenue bonds or other obligations are to be issued to pay all or part of the cost of the project, the project must be so leased or the contract for its sale or management must be entered into prior to or simultaneously with the issuance of the bonds or obligations; provided, however, that the acquisition and development of land by an authority as the site for an industrial park as provided in this chapter or the acquisition and development of land by an authority as the site for a sports facility or amphitheater in accordance with Code Section 36-62-2 and the operation of such a sports facility or amphitheater shall not be deemed to be the operation of a project and, notwithstanding anything in this chapter to the contrary, an authority shall not be required to enter into a lease of such a project or a contract for its sale or management as a condition to the issuance of bonds or other obligations

of the authority to provide financing therefor. If sold, the purchase price may be paid at one time or in installments falling due over not more than 40 years from the date of transfer of possession. The lessee or purchaser shall be required to pay all costs of operating and maintaining the leased or purchased property and to pay rentals or installments in amounts sufficient to pay the principal of and the interest and premium, if any, on all of its bonds and other obligations as such principal and interest become due. If the project is managed, the management contract must contain a term not less than the final maturity date of any bonds or other obligations of the authority to provide financing for the managed project and must provide that all costs of operating and maintaining the managed project, including all management fees payable under the management contract, shall be paid solely from the revenues of the managed project and from the proceeds of any bonds or other obligations of the authority to provide financing for the managed project. Any such management contract may contain provisions allowing the authority to terminate the management contract, but if the authority exercises any right to terminate a management contract, it must immediately enter into another management contract meeting the requirements of this Code section. (Ga. L. 1963, p. 531, § 6; Ga. L. 1969, p. 137, § 5; Ga. L. 1982, p. 1706, §§ 3, 8; Ga. L. 1987, p. 1067, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 1996, p. 1105, § 2; Ga. L. 2003, p. 390, § 3; Ga. L. 2018, p. 1112, § 36/SB 365.)

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, substituted "paragraph (7) of subsection (a)" for "paragraph (7)" in the third sentence of this Code section.

JUDICIAL DECISIONS

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113 (2012).

36-62-8. Obligations of authority; use of proceeds; status as revenue obligations; subsequent series of bonds or notes; bond anticipation notes; interest rates; issuance and validation.

JUDICIAL DECISIONS

Validation order insufficient. — Because a revenue bond validation order contained merely a dry recitation that certain legal requirements had been met,

adequate appellate review of the trial court's decision making process was effectively prevented; the validation order did not specifically address a resident's objection that the transaction did not comply with the Development Authorities Law, O.C.G.A. § 36-62-8(b), or the process by which the court came to the court's conclusion that the proposed transaction followed all proper and necessary steps. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113 (2012).

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113 (2012).

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

36-62-9. Purposes of chapter; issuance of bonds or bond anticipation notes; exceptions.

JUDICIAL DECISIONS

Development authority not required to own or operate project to issue bonds. — Proposed bond transaction did not violate Ga. Const. 1983, Art. IX, Sec. VI, Para. I and O.C.G.A. § 36-82-66 of the Revenue Bond Law merely because the development authority would not own or operate the proposed stadium; the development authority could use bond proceeds for paying all or part of the cost of any project (O.C.G.A. § 36-62-6(a)(13)), not only those projects the authority developed, and the authority could pay the costs of another government entity's project pursuant to O.C.G.A. § 36-62-9. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616 (2015).

CHAPTER 66

ZONING PROCEDURES

36-66-1. Short title.

JUDICIAL DECISIONS

Failure to address constitutional issue on part of trial court. — Trial court erred by failing to address whether a 1993 county zoning ordinance was constitu-

tional because the record established that the landfill permit applicant raised a constitutional challenge to the zoning ordinance before the trial court in its response to the challengers' motion for partial summary judgment and, in fact, in its transfer order to the appellate court, the trial court specifically stated that the court did not rule on the applicant's constitutional argument. Southern States-Bartow County, Inc. v. Riverwood Farm Prop. Owners Ass'n, Inc., 331 Ga. App. 878, 769 S.E.2d 823 (2015).

RESEARCH REFERENCES

ALR. — Validity of zoning regulations prohibiting or regulating removal or exploitation of oil and gas, including hydrofracking, 84 A.L.R.6th 133.

36-66-3. Definitions.

Law reviews. — For survey article on real property law, see 67 Mercer L. Rev. 193 (2015).

JUDICIAL DECISIONS

"Zoning decision" construed.

Letter from a county to a developer advising that proposals would be considered under an amended ordinance limiting the development of private sewer systems was not a "decision" of the county for purposes of triggering the 30-day period to appeal under O.C.G.A. § 5-3-20; therefore, the developer's claim of inverse condemnation never ripened. Mortgage Alliance Corp. v. Pickens County, 294 Ga. 212, 751 S.E.2d 51 (2013).

When property owners sought a conditional use permit for special events on their property, and the county planning commission published notice of a hearing that complied with O.C.G.A. § 36-66-4(a), then recommended granting the permit, the county board of commissioners' vote to grant the permit three months later did not require additional notice. Hoechstetter v. Pickens County, 341 Ga. App. 213, 799 S.E.2d 352 (2017).

"Zoning ordinance". — Commonly understood definition of "zoning ordinance" would encompass all those legislative acts that the Georgia's Zoning Procedures Law (ZPL), O.C.G.A. § 36-66-1 et seq., defines as "zoning decisions" under O.C.G.A. § 36-66-3(4); thus, the DeKalb County Organizational Act and the ZPL are consistent with one another because both distinguish between comprehensive zoning ordinances and all other zoning ordinances. Jester v. Red Alligator, LLC, 344 Ga. App. 15, 806 S.E.2d 920 (2017).

36-66-4. Hearings on proposed zoning decisions; notice of hearing; nongovernmental initiated actions; reconsideration of defeated actions; procedure on zoning for property annexed into municipality.

Law reviews. — For annual survey on real property, see 69 Mercer L. Rev. 251 (2017). For annual survey on zoning and land use law, see 69 Mercer L. Rev. 371 (2017).

JUDICIAL DECISIONS

Notice.

When property owners sought a conditional use permit for special events on their property, and the county planning

commission published notice of a hearing that complied with O.C.G.A. § 36-66-4(a), then recommended granting the permit, the county board of commissioners' vote to grant the permit three months later did not require additional notice. Hoechstetter v. Pickens County, 341 Ga. App. 213, 799 S.E.2d 352 (2017).

Adequate state remedy for procedural irregularities in adoption of new zoning ordinances. — Trial court did not err in granting the city's motion for judgment on the pleadings on the plaintiffs' procedural due process claims as Georgia's Zoning Procedures Law (ZPL), O.C.G.A. § 36-66-1 et seq., provided the plaintiffs with an adequate state remedy for alleged procedural irregularities committed by the city in the adoption of a new zoning ordinance because the ZPL required local governments to provide property owners with a meaningful opportunity to be heard before enacting a zoning ordinance, not simply mere notice of a hearing, as the ZPL required that a local government conduct a public hearing on a proposed zoning ordinance before its adoption; and, if no public hearing was held, aggrieved property owners could sue to have the ordinance declared invalid. Schumacher v. City of Roswell, 344 Ga. App. 135, 809 S.E.2d 262 (2017).

Cited in Edwards v. City of Warner Robins, 302 Ga. 381, 807 S.E.2d 438 (2017).

36-66-5. Adoption of hearing policies and procedures and standards for exercise of zoning power.

JUDICIAL DECISIONS

Notice of hearing. — County Planning Commission had the authority to conduct public hearings on applications for conditional use permits; the commission's notice of this hearing complied with O.C.G.A. § 36-66-4(a), Pickens County Code of Ordinances § 67-15, Appendix A, §§ 9.0, 14, and an additional notice was not required when the Board of Commissioners voted on the Planning Commission's recommendation. Hoechstetter v. Pickens County, 341 Ga. App. 213, 799 S.E.2d 352 (2017).

CHAPTER 66B

MOBILE BROADBAND INFRASTRUCTURE LEADS TO DEVELOPMENT

Sec.
36-66B-1. Short title.
36-66B-2. Legislative findings and intent.
36-66B-3. Definitions.
36-66B-4. Streamlined processing.
36-66B-5. Time limitations for review of application for new wireless facilities or support structure.
36-66B-6. Limitations on local regulations.
36-66B-7. Limitations on local fees charged.

36-66B-1. Short title.

This chapter shall be known and may be cited as the "Mobile Broadband Infrastructure Leads to Development (BILD) Act." (Code

1981, § 36-66B-1, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, substituted "'Mobile Broadband Infrastructure Leads to Development (BILD) Act'" for "'Advanced Broadband Collocation Act'".

Law reviews. — For article on the 2014 amendment of this chapter, see 31 Ga. St. U.L. Rev. 149 (2014).

36-66B-2. Legislative findings and intent.

(a) The General Assembly finds that the enactment of this chapter is necessary to:

(1) Ensure the safe and efficient integration of facilities necessary for the provision of broadband and other advanced wireless communication services throughout this state;

(2) Ensure the ready availability of reliable wireless communication services to the public to support personal communications, economic development, and the general welfare;

(3) Encourage where feasible the modification or collocation of wireless facilities on existing wireless support structures over the construction of new wireless support structures in the deployment or expansion of commercial wireless networks; and

(4) Allow the deployment of critical wireless infrastructure to ensure that first responders can provide for the health and safety of all residents of Georgia.

(b) While recognizing and confirming the purview of local governments to exercise zoning, land use, and permitting authority within their territorial boundaries with regard to the location, construction, and modification of wireless communication facilities, it is the intent of this chapter to establish procedural standards for the exercise of such authority so as to streamline and facilitate the construction, collocation, or modification of such facilities, including the placement of new or additional wireless facilities on existing wireless support structures. It is not the intent of this chapter to limit or preempt the scope of a local government's review of zoning, land use, or permitting applications for the siting of wireless facilities or wireless support structures or to require a local government to exercise its zoning power. (Code 1981, § 36-66B-2, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, in subsection (a), deleted "and" from the end of paragraph (a)(2), substituted "; and" for a period at the end of paragraph (a)(3), and added paragraph (a)(4); and inserted "construction, collocation, or" near the middle of the first sentence of subsection (b).

36-66B-3. Definitions.

As used in this chapter, the term:

(1) "Accessory equipment" means any equipment serving or being used in conjunction with a wireless facility or wireless support structure and includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, and storage sheds, shelters, or similar structures.

(2) "Antenna" means communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communication services.

(3) "Application" means a formal request submitted to the local governing authority to construct, collocate, or modify a wireless support structure or a wireless facility.

(4) "Collocate" or "collocation" means the placement or installation of new wireless facilities on previously approved and constructed wireless support structures, including monopoles and towers, both self-supporting and guyed, in a manner that negates the need to construct a new freestanding wireless support structure. Such term includes the placement of accessory equipment within an existing equipment compound.

(5) "Complete application" means an application containing all documents, information, and fees specifically enumerated in or required by the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

(6) "Equipment compound" means an area surrounding or adjacent to the base of a wireless support structure within which accessory equipment is located.

(7) "Local governing authority" means a municipality or county that has adopted land use or zoning regulations for all or the majority of land uses within its jurisdiction or has adopted separate regulations pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

(8) "Modification" or "modify" means the improvement, upgrade, expansion, or replacement of existing wireless facilities on an existing wireless support structure or within an existing equipment compound, provided such improvement, upgrade, expansion, or replacement does not increase the height of the wireless support structure or increase the dimensions of the equipment compound.

(9) "Registry" means any official list, record, or register maintained by a local governing authority of wireless facilities, equipment compounds, or wireless support structures.

(10) "Utility" means any person, corporation, municipality, county, or other entity, or department thereof or entity related or subordinate thereto, providing retail or wholesale electric, data, cable, or telecommunications services.

(11) "Wireless facility" means the set of equipment and network components, exclusive of the underlying wireless support structure, including antennas, transmitters, receivers, base stations, power supplies, cabling, and accessory equipment, used to provide wireless data and wireless telecommunication services.

(12) "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing or alternative structure designed to support or capable of supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service. (Code 1981, § 36-66B-3, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, inserted "transmits, receives, or" near the beginning of paragraph (2); in paragraph (3), substituted "collocate" for "collate" in the first sentence and deleted the former second sentence, which read: "An application shall be deemed complete when all documents, information, and fees specifically enumerated in the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, modification, or operation of wireless facilities are submitted by the applicant to the authority."; substituted "'Collocate' or 'collocation'" for "'Collocation'" at the beginning of paragraph (4); added paragraph (5); redesignated former paragraphs (5) through (7) as present paragraphs (6) through (8), respectively; inserted "collocation," in paragraph (7); added paragraphs (9) and (10); redesignated former paragraphs (8) and (9) as present paragraphs (11) and (12), respectively; inserted "wireless" preceding "telecommunication" near the end of paragraph (11); and, in paragraph (12), substituted "any telephone or electrical utility pole or any tower" for "any electrical utility pole or tower" in the second sentence.

36-66B-4. Streamlined processing.

(a) Applications for collocation or modification of a wireless facility entitled to streamlined processing under this Code section shall be reviewed for conformance with applicable site plan and building permit requirements, including zoning and land use conformity, but shall not otherwise be subject to the issuance of additional zoning, land use, or special use permit approvals beyond the initial zoning, land use, or special permit approvals issued for such wireless support structure or wireless facility. The intent of this Code section is to allow previously approved wireless support structures and wireless facilities to be modified or collocations thereto to be accepted without additional zoning or land use review beyond that which is typically required by the local governing authority for the issuance of building or electrical permits.

(b) The streamlined process set forth in subsection (a) of this Code section shall apply to applications for proposed modifications and to applications for proposed collocations that meet the following requirements:

(1) The proposed modification or collocation shall not increase the overall height or width of the wireless support structure to which the wireless facilities are to be attached;

(2) The proposed modification or collocation shall not increase the dimensions of the equipment compound initially approved by the local governing authority;

(3) The proposed modification or collocation shall comply with applicable conditions of approval, if any, applied to the initial wireless facilities and wireless support structure, as well as any subsequently adopted amendments to such conditions of approval; and

(4) The proposed modification or collocation shall not exceed the applicable weight limits for the wireless support structure, as demonstrated by a letter from a structural engineer licensed to practice in this state.

(c) A local governing authority's review of an application to modify or collocate wireless facilities on an existing wireless support structure shall not include an evaluation of the technical, business, or service characteristics of such proposed wireless facilities. A local governing authority shall not require an applicant to submit radio frequency analyses or any other documentation intended to demonstrate the proposed service characteristics of the proposed wireless facilities, to illustrate the need for such wireless facilities, or to justify the business decision to collocate such wireless facilities; provided, however, that the local governing authority may require the applicant to provide a letter from a radio frequency engineer certifying the applicant's proposed wireless facilities will not interfere with public safety emergency communications.

(d) Within 90 calendar days of the date an application for modification or collocation of wireless facilities is filed with the local governing authority, unless another date is specified in a written agreement between the local governing authority and the applicant, the local governing authority shall:

(1) Make its final decision to approve or disapprove the application; and

(2) Advise the applicant in writing of its final decision.

(e) Within 30 calendar days of the date an application for modification or collocation is filed with the local governing authority, the local

governing authority shall determine if it is a complete application and, if it determines the application is not a complete application, notify the applicant in writing of any information required to complete such application. To the extent additional information is required to complete the application, the time required by the applicant to provide such information shall not be counted toward the 90 calendar day review period set forth in subsection (d) of this Code section. Information requested to complete the application may only include the documents, information, and fees specifically enumerated in the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities. (Code 1981, § 36-66B-4, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, substituted "modified or collocations thereto to be accepted" for "modified or accept collocations" in the second sentence of subsection (a); substituted "proposed modifications and to applications for proposed" for "all modifications and to applications for all proposed" in the introductory paragraph of subsection (b); inserted "modification or" throughout paragraphs (b)(1) through (b)(4); inserted "initially" in paragraph (b)(2); inserted "public safety" near the end of the last sentence of subsection (c); and, in subsection (e), in the first sentence, inserted "determine if it is a complete application and, if it determines the application is not a complete application", substituted "such application" for "the application" near the end, and added the last sentence.

36-66B-5. Time limitations for review of application for new wireless facilities or support structure.

(a) Within 150 calendar days of the date an application for a new wireless support structure is filed with the local governing authority, unless another date is specified in a written agreement between the local governing authority and the applicant, the local governing authority shall:

(1) Make its final decision to approve or disapprove the application; and

(2) Advise the applicant in writing of its final decision.

(b) Within 30 calendar days of the date an application for a new wireless support structure is filed with the local governing authority, the local governing authority shall determine if it is a complete application and, if it determines the application is not a complete application, notify the applicant in writing of any information required to complete such application. To the extent additional information is required to complete the application, the time required by the applicant to provide such information shall not be counted toward the calendar day review period set forth in subsection (a) of this Code section. Information requested to complete the application may only include the

documents, information, and fees specifically enumerated in the local governing authority's existing regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities. (Code 1981, § 36-66B-5, enacted by Ga. L. 2014, p. 413, § 1/HB 176.)

Effective date. — This Code section became effective July 1, 2014.

36-66B-6. Limitations on local regulations.

In the regulation of the placement or construction of any new wireless facility or wireless support structure, a local governing authority shall not:

(1) Condition the approval of any application for a new wireless support structure on a requirement that a modification or collocation to such structure be subject to a review that is inconsistent with the requirements of Code Section 36-66B-4;

(2) Require the removal of existing wireless support structures or wireless facilities as a condition to approval of an application for a new wireless facility or wireless support structure unless such existing wireless support structure or wireless facility is abandoned and owned by the applicant; or

(3) Require the applicant to place an antenna or other wireless communications equipment on publicly owned land or on a publicly or privately owned water tank, building, or electric transmission tower as an alternative to the location proposed by the applicant. (Code 1981, § 36-66B-6, enacted by Ga. L. 2014, p. 413, § 1/HB 176.)

Effective date. — This Code section became effective July 1, 2014.

36-66B-7. Limitations on local fees charged.

A local governing authority shall not:

(1) Charge an applicant a zoning, permitting, or other fee for review or inspection of a new or existing wireless facility or wireless support structure in an amount greater than the amount authorized by subsection (a) of Code Section 48-13-9;

(2) Charge an applicant a zoning, permitting, or other fee for review or inspection of a collocation or modification in excess of $500.00;

(3) Seek reimbursement from the applicant for any application fees, consultation fees, registry fees, or audit fees with respect to a

wireless facility or wireless support structure that are based on a contingency fee arrangement; or

(4) Charge a wireless service provider or wireless infrastructure provider any rental, license, or other fees in excess of the fair market value for rental or use of similarly situated property to renew or extend the term of a lease or other agreement for a wireless facility or wireless support structure on such local governing authority's property. (Code 1981, § 36-66B-7, enacted by Ga. L. 2014, p. 413, § 1/HB 176.)

Effective date. — This Code section became effective July 1, 2014.

CHAPTER 67A

CONFLICT OF INTEREST IN ZONING ACTIONS

36-67A-2. Disclosure of financial interests.

JUDICIAL DECISIONS

Statute of limitations. — Because the tolling exception to the statute of limitation applied to the failure to disclose a financial interest charge, and the prosecution for that charge was timely commenced after the crime was discovered, the trial court did not err by denying the defendant's plea in bar based on the expiration of the statute of limitation. Kenerly v. State, 325 Ga. App. 412, 750 S.E.2d 822 (2013).

36-67A-4. Penalties.

JUDICIAL DECISIONS

Statute of limitations. — Because the tolling exception to the statute of limitation applied to the failure to disclose a financial interest charge, and the prosecution for that charge was timely commenced after the crime was discovered, the trial court did not err by denying the defendant's plea in bar based on the expiration of the statute of limitation. Kenerly v. State, 325 Ga. App. 412, 750 S.E.2d 822 (2013).

CHAPTER 69

MUTUAL AID

Sec.
36-69-2. "Local emergency" defined.
36-69-3. Extraterritorial cooperation and assistance to local law enforcement agencies or fire departments; commander of operations.
36-69-4. Powers and duties of employees of political subdivision or institution within the University System of Georgia or the Technical College System of Georgia who are rendering aid.
36-69-5. Responsibility for expenses and compensation of employees.
36-69-6. Applicability of privileges, immunities, exemptions, and benefits.
36-69-7. Liability for acts or omissions of responding agency employees.
36-69-8. Construction of chapter.

36-69-2. "Local emergency" defined.

As used in this chapter, the term "local emergency" means the existence of conditions of extreme peril to the safety of persons and property within the territorial limits of a political subdivision of the state or on a campus of an institution within the University System of Georgia or the Technical College System of Georgia caused by natural disasters, riots, civil disturbances, or other situations presenting major law enforcement and other public safety problems, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision of the state and which require the combined forces of other political subdivisions of the state to combat. (Code 1981, § 36-69-2, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 1; Ga. L. 2018, p. 550, § 5-4/SB 407.)

The 2018 amendment, effective July 1, 2018, inserted "or the Technical College System of Georgia" after "University System of Georgia" in this Code section.

Editor's notes. — Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-2 but actually amended Code Section 36-69-2.

36-69-3. Extraterritorial cooperation and assistance to local law enforcement agencies or fire departments; commander of operations.

(a)(1) Upon the request of a local law enforcement agency for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, the chief of police or public safety director of any municipality or chief of police or public safety director of any county police force may, with the

approval of the governing authority of any such officer's political subdivision, and the sheriff of any county may cooperate with and render assistance extraterritorially to such local law enforcement agency requesting the same.

(2)(A) Upon the request of a local law enforcement agency for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, the public safety director or chief of police of any institution within the University System of Georgia or the Technical College System of Georgia may, with the approval of the president of such institution, cooperate with and render assistance extraterritorially to such law enforcement agency requesting the same.

(B) Upon the request for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, which request is made by a public safety director or chief of police of any institution within the University System of Georgia or the Technical College System of Georgia after approval by the president of such institution, the chief of police or public safety director of any municipality or any county police force may, with the approval of the governing authority of any such officer's political subdivision and the sheriff of the county, cooperate with and render assistance extraterritorially to such law enforcement agency of the institution requesting the same.

(b) Upon the request of any local fire department for assistance in a local emergency, in preventing or suppressing a fire, or in protecting life and property, the fire chief or public safety director of any local political subdivision may, with the approval of the governing authority of such political subdivision, cooperate with and render assistance extraterritorially to such local fire department requesting the same.

(c) Upon the request of any local law enforcement agency or local director of emergency medical services for assistance in a local emergency or in transporting wounded, injured, or sick persons to a place where medical or hospital care is furnished, emergency medical technicians employed by a political subdivision may, with the approval of the governing authority of such political subdivision, cooperate with and render assistance extraterritorially to such local law enforcement agency or local director of emergency services.

(d) Authorization for furnishing assistance extraterritorially may be granted by the sheriff of any county or the governing authority of a local political subdivision or the president of an institution within the

University System of Georgia or the Technical College System of Georgia to any of its agencies or employees covered by this Code section prior to any occurrence resulting in the need for such assistance; provided, however, that any prior authorization granted by the president of an institution within the University System of Georgia or the Technical College System of Georgia for the furnishing of assistance extraterritorially must be submitted to and approved by the board of regents or the State Board of the Technical College System of Georgia, respectively, before it becomes effective. Such authorization may provide limitations and restrictions on such assistance furnished extraterritorially, provided that such limitations and restrictions do not conflict with the provisions of Code Sections 36-69-4 through 36-69-6.

(e) The senior officer of the public safety agency of a political subdivision or institution within the University System of Georgia or the Technical College System of Georgia which requests assistance in a local emergency as provided in this Code section shall be in command of the local emergency as to strategy, tactics, and overall direction of the operations with respect to the public safety officers and employees rendering assistance extraterritorially at the request of such public safety agency. All orders or directions regarding the operations of the public safety officers and employees rendering assistance extraterritorially shall be relayed to the senior officer in command of the public safety agency rendering assistance extraterritorially. (Code 1981, § 36-69-3, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 2; Ga. L. 2018, p. 550, § 5-3/SB 407.)

The 2018 amendment, effective July 1, 2018, inserted "or the Technical College System of Georgia" throughout this Code section; in subparagraph (a)(2)(B), deleted "chief of police or public safety director of" following "municipality or" in the middle, substituted "subdivision and the sheriff of the county, cooperate" for "subdivision, and the sheriff of the county may cooperate" near the end; and inserted "or the State Board of the Technical College System of Georgia, respectively," near the end of the first sentence of subsection (d).

36-69-4. Powers and duties of employees of political subdivision or institution within the University System of Georgia or the Technical College System of Georgia who are rendering aid.

Whenever the employees of any political subdivision or institution within the University System of Georgia or the Technical College System of Georgia are rendering aid outside their political subdivision or campus, respectively, and pursuant to the authority contained in this chapter, such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivision or on the campus of the institution in which they are normally employed. (Code 1981, § 36-69-4, enacted by Ga. L.

1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 3; Ga. L. 2018, p. 550, § 5-4/SB 407.)

The 2018 amendment, effective July 1, 2018, inserted "or the Technical College System of Georgia" after "University System of Georgia" in this Code section.

Editor's notes. — Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-4 but actually amended Code Section 36-69-4.

36-69-5. Responsibility for expenses and compensation of employees.

Unless otherwise provided by contract, the political subdivision or institution within the University System of Georgia or the Technical College System of Georgia which furnishes any equipment pursuant to this chapter shall bear the loss or damage to such equipment and shall pay any expense incurred in the operation and maintenance thereof. Unless otherwise provided by contract, the political subdivision or institution within the University System of Georgia or the Technical College System of Georgia furnishing aid pursuant to this chapter shall compensate its employees during the time of rendering of such aid and shall defray the actual travel and maintenance expenses of such employees while they are rendering such aid. Such compensation shall include any amounts paid or due for compensation due to personal injury or death while such employees are engaged in rendering such aid. (Code 1981, § 36-69-5, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 4; Ga. L. 2018, p. 550, § 5-4/SB 407.)

The 2018 amendment, effective July 1, 2018, inserted "or the Technical College System of Georgia" after "University System of Georgia" throughout this Code section.

Editor's notes. — Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-5 but actually amended Code Section 36-69-5.

36-69-6. Applicability of privileges, immunities, exemptions, and benefits.

All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and all pension, insurance, relief, disability, workers' compensation, salary, death, and other benefits which apply to the activity of such officers, agents, or employees of any such political subdivision or institution within the University System of Georgia or the Technical College System of Georgia when performing their respective functions within the territorial limits of their respective political subdivisions or campuses shall apply to such officers, agents, or employees to the same degree, manner, and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this chapter relating to

mutual aid. The provisions of this Code section shall apply with equal effect to paid, volunteer, and auxiliary employees. (Code 1981, § 36-69-6, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 5; Ga. L. 2018, p. 550, § 5-4/SB 407.)

The 2018 amendment, effective July 1, 2018, inserted "or the Technical College System of Georgia" after "University System of Georgia" in the first sentence of this Code section.

Editor's notes. — Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-6 but actually amended Code Section 36-69-6.

36-69-7. Liability for acts or omissions of responding agency employees.

Neither a public safety agency which requests assistance pursuant to Code Section 36-69-3 nor the political subdivision or institution of the University System of Georgia or the Technical College System of Georgia in which the public safety agency is located shall be liable for any acts or omissions of employees of a responding public safety agency rendering assistance extraterritorially under the provisions of this chapter. (Code 1981, § 36-69-7, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 6; Ga. L. 2018, p. 550, § 5-4/SB 407.)

The 2018 amendment, effective July 1, 2018, inserted "or the Technical College System of Georgia" after "University System of Georgia" in this Code section.

Editor's notes. — Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-7 but actually amended Code Section 36-69-7.

36-69-8. Construction of chapter.

(a) The provisions of this chapter shall not be construed as creating a duty on the part of any public safety agency of a local political subdivision or institution within the University System of Georgia or the Technical College System of Georgia to respond to a request from any public safety agency of another local political subdivision or institution of the University System of Georgia or the Technical College System of Georgia as authorized in Code Section 36-69-3.

(b) Notwithstanding the provisions of subsection (e) of Code Section 36-69-3, the provisions of this chapter shall not be construed as creating a duty on the part of a public safety agency rendering assistance extraterritorially to stay at the scene of a local emergency for any length of time. Such responding public safety agency may depart the scene of a local emergency at any time at the discretion of the officer in command of the public safety agency rendering assistance extraterritorially at the scene of the local emergency. (Code 1981, § 36-69-8, enacted by Ga. L. 1988, p. 887, § 1; Ga. L. 1990, p. 1959, § 7; Ga. L. 2018, p. 550, § 5-4/SB 407.)

The 2018 amendment, effective July 1, 2018, inserted "or the Technical College System of Georgia" after "University System of Georgia" in subsection (a).

Editor's notes. — Ga. L. 2018, p. 550, § 5-4/SB 407, which amended this Code section, purported to amend Code Section 36-36-8 but actually amended Code Section 36-69-8.

CHAPTER 70

COORDINATED AND COMPREHENSIVE PLANNING AND SERVICE DELIVERY BY COUNTIES AND MUNICIPALITIES

Article 1
Planning

Sec.
36-70-6. Promotion of deployment of broadband services by broadband services providers.

ARTICLE 1

PLANNING

36-70-1. Legislative intent and purpose.

Law reviews. — For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).

36-70-6. Promotion of deployment of broadband services by broadband services providers.

(a) As used in this Code section, the terms "broadband services" and "broadband services provider" shall have the same meanings as provided in Code Section 50-40-1.

(b) The governing bodies of municipalities and counties shall provide in any comprehensive plan for the promotion of the deployment of broadband services by broadband services providers. (Code 1981, § 36-70-6, enacted by Ga. L. 2018, p. 629, § 3-1/SB 402.)

Effective date. — This Code section became effective May 7, 2018.

Cross references. — Competitive Emerging Communications Technologies Act of 2006, § 46-5-220. Coordination and Deployment of Broadband Services, § 50-39-1 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-1" was substituted for "Code Section 50-39-1" at the end of subsection (a).

Editor's notes. — Ga. L. 2018, p. 629, § 1/SB 402, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Achieving Connectivity Everywhere (ACE) Act.'"

ARTICLE 2

SERVICE DELIVERY

36-70-20. Legislative intent.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

Scope of trial court's authority. — Trial court's ruling that sovereign immunity did not bar claims under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., specifically O.C.G.A. § 36-70-25.1(d)(2), was affirmed because sovereign immunity was waived only to the extent of the statute, which extends no further than the remedies specifically authorized by the Act and the trial court could not exceed the scope of § 36-70-25.1(d)(2) by granting relief not provided therein for claims brought under the Act. City of Union Point v. Greene County, No. S17X1879, 2018 Ga. LEXIS 185 (Mar. 15, 2018).

36-70-23. Required components.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012); City of Union Point v. Greene County, No. S17X1879, 2018 Ga. LEXIS 185 (Mar. 15, 2018).

36-70-24. Criteria for service delivery strategy.

JUDICIAL DECISIONS

Constitutionality.

Trial court erred by finding that the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, specifically O.C.G.A. § 36-70-25.1(d)(2), was unconstitutional because it did not permit the trial court to direct that the parties enter into a particular agreement and, therefore, did not invade the province of the legislative branch by imposing a tax or allocating the proceeds of

that tax. City of Union Point v. Greene County, No. S17X1879, 2018 Ga. LEXIS 185 (Mar. 15, 2018).

36-70-25. Approval; extension of deadline date.

JUDICIAL DECISIONS

Scope of trial court's authority. — Trial court exceeded the court's authority under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., by finding it in breach of contract and by imposing declaratory and injunctive relief because it was not authorized to impose a remedy not provided by O.C.G.A. § 36-70-25.1(d)(2) for claims brought under the Act; the court had no authority under the Act to fashion a different remedy or enjoin the parties as to the funding or the method of provision of those services. City of Union Point v. Greene County, No. S17X1879, 2018 Ga. LEXIS 185 (Mar. 15, 2018).

36-70-25.1. Dispute resolution procedures.

JUDICIAL DECISIONS

Scope of trial court's authority. — Trial court exceeded the court's authority under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., by finding it in breach of contract and by imposing declaratory and injunctive relief because it was not authorized to impose a remedy not provided by O.C.G.A. § 36-70-25.1(d)(2) for claims brought under the Act; the court had no authority under the Act to fashion a different remedy or enjoin the parties as to the funding or the method of provision of those services. City of Union Point v. Greene County, No. S17X1879, 2018 Ga. LEXIS 185 (Mar. 15, 2018).

Constitutionality. — Trial court erred by finding that the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, specifically O.C.G.A. § 36-70-25.1(d)(2), was unconstitutional because it did not permit the trial court to direct that the parties enter into a particular agreement and, therefore, did not invade the province of the legislative branch by imposing a tax or allocating the proceeds of that tax. City of Union Point v. Greene County, No. S17X1879, 2018 Ga. LEXIS 185 (Mar. 15, 2018).

Scope of trial court's authority. — Trial court's ruling that sovereign immunity did not bar claims under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20, specifically O.C.G.A. § 36-70-25.1(d)(2), was affirmed because sovereign immunity was waived only to the extent of the statute, which extends no further than the remedies specifically authorized by the Act and the trial court could not exceed the scope of § 36-70-25.1(d)(2) by granting relief not provided therein for claims brought under the Act. City of Union Point v. Greene County, No. S17X1879, 2018 Ga. LEXIS 185 (Mar. 15, 2018).

Cited in Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-26. Required filing; verification of components.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin

the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-27. Limitation of funding for projects inconsistent with strategy.

JUDICIAL DECISIONS

Scope of trial court's authority. — Trial court's ruling that sovereign immunity did not bar claims under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., specifically O.C.G.A. § 36-70-25.1(d)(2), was affirmed because sovereign immunity was waived only to the extent of the statute, which extends no further than the remedies specifically authorized by the Act and the trial court could not exceed the scope of § 36-70-25.1(d)(2) by granting relief not provided therein for claims brought under the Act. City of Union Point v. Greene County, No. S17X1879, 2018 Ga. LEXIS 185 (Mar. 15, 2018).

Cited in Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-28. "Affected municipality" defined; review and revision of strategy.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

CHAPTER 71

DEVELOPMENT IMPACT FEES

36-71-1. Short title; legislative findings and intent.

JUDICIAL DECISIONS

Cited in Effingham County v. Roach, 329 Ga. App. 805, 764 S.E.2d 600 (2014).

36-71-4. Calculation of fees.

JUDICIAL DECISIONS

Agreement requiring prepayment of impact fees.

Trial court did not err by denying a county's motion for summary judgment and concluding that the county's obligation to provide water and sewer lines under a 2006 agreement was not affected by the Georgia Court of Appeal's decision in another case invalidating the prepayment of development impact fees under a similar agreement because the invalid portion of the contract regarding the impact fees was severable under the agreement, which included an explicit severability clause. Effingham County v. Roach, 329 Ga. App. 805, 764 S.E.2d 600 (2014), overruled on other grounds, Rivera v. Washington, 298 Ga. 770, 784 S.E.2d 775 (2016).

CHAPTER 72

ABANDONED CEMETERIES AND BURIAL GROUNDS

36-72-2. Definitions.

JUDICIAL DECISIONS

Abandonment was a jury question. — Descendants of the grantor of a burial ground were not entitled to summary judgment on a buyer's claim that the cemetery was abandoned, O.C.G.A. § 36-72-2(1), because there was evidence that no one had been buried there since 1971, that the descendants had not paid taxes on the lot, and that the descendants had not maintained the cemetery. City of Sandy Springs v. Mills, 331 Ga. App. 709, 771 S.E.2d 405 (2015).

CHAPTER 74

LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS

ARTICLE 2

ENFORCEMENT BOARDS CREATED ON OR AFTER JANUARY 1, 2003

36-74-23. Initiating of proceedings; time to correct violations; repeat violations; hearings.

JUDICIAL DECISIONS

Violations properly affirmed. — Regardless of whether the trial court erred in finding that the defendant committed repeat violations of operating illegal room-

ing houses in a city, the court's finding that the city did not have to afford the defendant with a pre-suit opportunity to correct the deficiencies under O.C.G.A. § 36-74-23(b) was affirmed on the alternative ground that the violations posed a serious threat to public health, safety, and welfare. Lewis v. City of Savannah, 336 Ga. App. 126, 784 S.E.2d 1 (2016).

CHAPTER 76

EXPEDITED FRANCHISING OF CABLE AND VIDEO SERVICES

Sec.
36-76-7. Customer service requirements.

36-76-6. Franchise fees.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

36-76-7. Customer service requirements.

(a) The holder of a state franchise shall comply with the customer service standards as set forth in 47 C.F.R. 76.309(c). No franchising authority shall have the power to require the holder of a state franchise to comply with any customer service standards other than those set forth in this Code section.

(b) Except as provided in paragraph (2) of subsection (c) of this Code section, each affected local governing authority shall receive and handle complaints from subscribers of the holder of a state franchise that reside in the affected local governing authority's jurisdiction.

(c)(1) By December 31, 2007, the Governor's Office of Consumer Affairs shall establish a uniform set of rules, which may include fines and penalties, pursuant to which an affected local governing authority shall resolve subscriber complaints. Said rules shall include a requirement that the cable service provider or video service provider participate in mandatory nonbinding mediation with the affected local governing authority and the subscriber if the issue cannot be resolved between the cable service provider or video service provider and the subscriber. Said rules shall apply only until 50 percent of the potential subscribers within an affected local governing authority are

offered service by two or more cable service providers or video service providers holding a state franchise or a local franchise.

(2) After such time as 50 percent of the potential subscribers within an affected local governing authority are being offered service by two or more cable service providers or video service providers holding a state franchise or a local franchise, an affected local governing authority may, in its discretion, by the adoption of a resolution or ordinance, discontinue receiving and handling all subscriber inquiries, billing issues, and other complaints for state franchise holders. Notwithstanding any other provision of law, where an affected local governing authority discontinues receiving and handling subscriber inquiries, billing issues, and other complaints relating to state franchise holders by adoption of a resolution or ordinance pursuant to this paragraph, bills to subscribers by cable service providers or video service providers holding a state franchise shall not include the contact information of such affected local governing authority for the purpose of directing or initiating complaints or making other such subscriber inquiries.

(d) Rules, orders, actions, and regulations previously adopted pursuant to this Code section shall remain of full force and effect as rules, orders, actions, and regulations of the Attorney General until amended, repealed, or superseded by rules or regulations adopted by the Attorney General. (Code 1981, § 36-76-7, enacted by Ga. L. 2007, p. 719, § 1/HB 227; Ga. L. 2008, p. 324, § 36/SB 455; Ga. L. 2015, p. 1088, § 26/SB 148.)

The 2015 amendment, effective July 1, 2015, added subsection (d).

Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities

---

CHAPTER 80

GENERAL PROVISIONS

Sec.
36-80-1. Code of ethics; members of local board of education allowed to discuss policies and actions of such board outside of board meetings; exceptions.
36-80-16. Local Government Authorities Registration.
36-80-21. Definitions; electronic transmission of budgets.
36-80-23. Prohibition on immigration

Sec.
sanctuary policies by local governmental entities; certification of compliance.
36-80-24. Limitation on elected official's or constitutional officer's use of government issued purchasing or credit cards; policy development.
Sec.
36-80-25. Financing of public projects by local entities.
36-80-26. (Effective January 1, 2019) Multi-county community improvement districts for transit projects.
36-80-27. Advertisement of bid or proposal opportunities.

36-80-1. Code of ethics; members of local board of education allowed to discuss policies and actions of such board outside of board meetings; exceptions.

A local board of education shall not adopt or follow any code of ethics which prevents the members of such board from discussing freely the policies and actions of such board outside of a board meeting. This Code section shall not apply to any matter or matters discussed in executive session as defined in subsection (a) of Code Section 50-14-1 or which are exempt from disclosure under Code Section 50-18-72. (Code 1981, § 36-80-1, enacted by Ga. L. 2016, p. 200, § 1/SB 275.)

Effective date. — This Code section became effective July 1, 2016.

Editor's notes. — Former Code Section 36-80-1, pertaining to all meetings of governing bodies to be public; private executive sessions; penalty, was repealed by Ga. L. 1988, p. 235, § 2, effective July 1, 1988. The former Code section was based on Ga. L. 1965, p. 118, § 2; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1987, p. 3, § 36.

36-80-5. Relief from or composition of debts under federal statute prohibited.

JUDICIAL DECISIONS

Bankruptcy. — Debtor, a Georgia county hospital authority, was ineligible for Chapter 9 relief because the State of Georgia, pursuant to O.C.G.A. § 36-80-5(a), had not specifically authorized the authority to file for relief under Chapter 9. United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

36-80-16. Local Government Authorities Registration.

(a) This Code section shall be known and may be cited as the "Local Government Authorities Registration Act."

(b) The General Assembly finds that there is a need for the state to create and maintain a record of all local government authorities. Such a record can best be maintained through annual registration of all local government authorities.

(c) The purpose of this Code section is to prescribe a registration process for all local government authorities authorized to operate in the

State of Georgia by general statute, local law, or local constitutional amendment.

(d) As used in this Code section, the term:

(1) "Debt" includes all long-term or short-term credit obligations including, but not limited to, mortgages, bonds, loans, notes, interest-bearing warrants, and advances. For the purposes of this Code section, debt shall also include lease-purchase obligations.

(2) "Local government authority" includes without limitation instrumentalities of one or more local governments created to fulfill a specialized public purpose or any other legally created organization that has authority to issue debt for a public purpose independent of a county or municipality, not to include state authorities. Local government authorities include joint authorities, regional authorities, hospital authorities, housing authorities, residential care facilities for the elderly authorities, resource recovery development authorities, solid waste management authorities, downtown development authorities, airport authorities, industrial, payroll and other development authorities, transit authorities, water and sewer authorities, parking authorities, recreation authorities, stadium and coliseum authorities, building authorities, public service authorities, or any other local government authority regardless of name. Such local government authorities may have been created by local constitutional amendment, general statute, or local law.

(e) All local government authorities authorized to operate in the State of Georgia must register annually with the Department of Community Affairs.

(f) Any local government authority which fails to register with the Department of Community Affairs shall not incur any debt or credit obligations, nor shall it be eligible for receipt of any state funds, until such time as it meets the registration requirement. Failure to register shall not have any adverse affect on any outstanding debt or credit obligation.

(g) The Department of Community Affairs shall establish registration and reporting procedures for local government authorities. Such procedures shall include, but are not limited to, information on the authority's legal name, members, function, date and means of creation, contact person, address, and telephone number.

(h) The Department of Community Affairs shall establish reasonable fees for the work related to administration and enforcement of this Code section; provided, however, no fee shall be charged or allowed for the annual registration as required in this Code section.

(i) The Department of Community Affairs shall maintain a certified list of registered local government authorities, available on request.

The department shall forward annually to the judge of the probate court in any affected county the registration information for all authorities operating in that county.

(j) Local government authorities shall initially register on or before January 1, 1996, and shall register each year thereafter by the date corresponding with the due date of that authority's report as provided for in subsection (b) of Code Section 36-81-8. (Code 1981, § 36-80-16, enacted by Ga. L. 1995, p. 560, § 1; Ga. L. 1996, p. 6, § 36; Ga. L. 1998, p. 128, § 36; Ga. L. 1998, p. 596, § 1; Ga. L. 2018, p. 158, § 1/HB 257.)

The 2018 amendment, effective July 1, 2018, inserted ", nor shall it be eligible for receipt of any state funds," in the first sentence of subsection (f); and, in subsection (j), deleted "on or before January 1 of" following "shall register" and added "by the date corresponding with the due date of that authority's report as provided for in subsection (b) of Code Section 36-81-8".

36-80-17. Authorization to contract for utility services; conditions and limitations.

JUDICIAL DECISIONS

Cited in City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

36-80-21. Definitions; electronic transmission of budgets.

(a) As used in this Code section, the term:

(1) "Audit" means an annual report of the financial affairs and transactions of a county, municipality, or consolidated government as required by Code Section 36-81-7 and an annual report of a school district as required by rule and regulation of the State Board of Education.

(2) "Budget" means:

(A) A plan of financial operation embodying an estimate of proposed expenditures during a budget period and the proposed means of financing such expenditures for a county, municipality, or consolidated government as required by Article 1 of Chapter 81 of this title and such plans of financial operation for the general fund, each special revenue fund, each debt service fund, each internal service fund, each enterprise fund, and each fiduciary fund in use by such unit of local government as such funds are defined in Code Section 36-81-2; and

(B) A plan of financial operation of a school district as required by rule and regulation of the State Board of Education and Code Section 20-2-67.

(3) "Local government" means any local school board or a governing authority of a county or municipality having an annual budget in excess of $1 million.

(4) "Vinson Institute" means the Carl Vinson Institute of Government of the University of Georgia.

(5) "Website" means a website which shall be developed, operated, and maintained by the Vinson Institute that shall allow the public to review and analyze the information identified in subsections (c) and (d) of this Code section at no cost to the public or the local governments that post to the website.

(b) Each local government shall post the information required by this Code section to the website for each fiscal year beginning on and after January 1, 2011.

(c) As soon as a local government has adopted, by ordinance or resolution, a final budget for an upcoming fiscal year, a copy of the budget shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable. In no event shall the PDF copy of the budget be transmitted to the Vinson Institute more than 30 calendar days following the adoption of the budget ordinance or resolution.

(d) After the close of a fiscal year, a copy of the audit of each local government shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable. The PDF copy of the audit of a county, municipality, or consolidated government shall be transmitted to the Vinson Institute concurrent with submission of the audit to the state auditor as required by subsection (d) of Code Section 36-81-7. The audit of a school district shall be transmitted to the Vinson Institute concurrent with submission of the audit to the State Board of Education as required by rule and regulation of the State Board of Education.

(e) Concurrent with the submission of the annual report by local law enforcement agencies required by subsection (g) of Code Section 9-16-19, a copy of such report shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable.

(f) The Vinson Institute shall, subject to appropriation by the General Assembly, develop the website for use by local governments under this Code section and provide all necessary training for local government officials in its operation in order to allow local governments to upload the information required by this Code section on a timely basis

at no cost to such local governments. (Code 1981, § 36-80-21, enacted by Ga. L. 2010, p. 519, § 1/HB 122; Ga. L. 2011, p. 752, § 36/HB 142; Ga. L. 2014, p. 866, § 36/SB 340; Ga. L. 2015, p. 693, § 3-23/HB 233.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Code Section 20-2-67" for "paragraph (3) of subsection (a) of Code Section 20-2-167" in subparagraph (a)(2)(B).

The 2015 amendment, effective July 1, 2015, substituted "subsection (g) of Code Section 9-16-19" for "division (u)(4)(D)(iii) of Code Section 16-13-49" in the middle of subsection (e). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-80-23. Prohibition on immigration sanctuary policies by local governmental entities; certification of compliance.

(a) As used in this Code section, the term:

(1) "Federal officials or law enforcement officers" means any person employed by the United States government for the purpose of enforcing or regulating federal immigration laws and any peace officer certified by the Georgia Peace Officer Standards and Training Council where such federal official or peace officer is acting within the scope of his or her employment for the purpose of enforcing federal immigration laws or preserving homeland security.

(2) "Immigration status" means the legality or illegality of an individual's presence in the United States as determined by federal law.

(3) "Immigration status information" means any information, not including any information required by law to be kept confidential but otherwise including but not limited to any statement, document, computer generated data, recording, or photograph, which is relevant to immigration status or the identity or location of an individual who is reasonably believed to be illegally residing within the United States or who is reasonably believed to be involved in domestic terrorism as that term is defined in Code Section 16-4-10 or a terroristic act as that term is defined by Code Section 35-3-62.

(4) "Local governing body" means any political subdivision of this state, including any county, consolidated government, municipality, authority, school district, commission, board, or any other local public body corporate, governmental unit, or political subdivision.

(5) "Local official or employee" means any elected or appointed official, supervisor or managerial employee, contractor, agent, or

certified peace officer acting on behalf of or in conjunction with a local governing body.

(6) "Sanctuary policy" means any regulation, rule, policy, or practice adopted by a local governing body which prohibits or restricts local officials or employees from communicating or cooperating with federal officials or law enforcement officers with regard to reporting immigration status information while such local official or employee is acting within the scope of his or her official duties.

(b) No local governing body, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact, adopt, implement, or enforce any sanctuary policy.

(c) Any local governing body that acts in violation of this Code section shall be subject to the withholding of state funding or state administered federal funding other than funds to provide services specified in subsection (d) of Code Section 50-36-1.

(d) As a condition of funding, the Department of Community Affairs, the Department of Transportation, or any other state agency that provides funding to local governing bodies shall require certification pursuant to Code Section 50-36-4 as proof of compliance with this Code section. (Code 1981, § 36-80-23, enacted by Ga. L. 2009, p. 734, § 1/SB 20; Ga. L. 2013, p. 111, § 5/SB 160; Ga. L. 2016, p. 244, § 1/SB 269.)

The 2013 amendment, effective July 1, 2013, substituted "subsection (d) of Code Section 50-36-1" for "subsection (c) of Code Section 50-36-1" at the end of subsection (c).

The 2016 amendment, effective July 1, 2016, in subsection (d), substituted "As a condition of funding, the Department" for "The Department" at the beginning, and substituted "shall require certification pursuant to Code Section 50-36-4 as proof of compliance with this Code section" for "may require certification of compliance with the Code section as a condition of funding" at the end.

Editor's notes. — Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides that: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

36-80-24. Limitation on elected official's or constitutional officer's use of government issued purchasing or credit cards; policy development.

(a) As used in this Code section, the term "constitutional officer" means the locally elected clerk of superior court, judge of the probate court, sheriff, tax receiver, tax collector, or tax commissioner.

(b) An elected official of a county, municipal corporation, local school system, or consolidated government or a constitutional officer shall be prohibited from the use of a government purchasing card or a government credit card unless:

(1) Such purchases are solely for items or services that directly relate to such official's or constitutional officer's public duties; and

(2) Such purchases are in accordance with guidelines adopted by the county, municipal corporation, local school system, consolidated government, or constitutional officer.

(c) Documents related to such purchases incurred by such elected officials or constitutional officers shall be available for public inspection.

(d) No such county, municipal corporation, local school system, or consolidated government shall issue government purchasing cards or government credit cards to elected officials on or after January 1, 2016, until the governing authority of such county, municipal corporation, local school system, or consolidated government, by public vote, has authorized such issuance and has promulgated specific policies regarding the use of such government purchasing cards or government credit cards. No constitutional officer shall issue government purchasing cards or government credit cards to himself, herself, or his or her employees on or after July 1, 2016, until he or she has promulgated specific policies regarding the use of such government purchasing cards or government credit cards that apply to himself or herself and his or her employees and such policies have been filed with the governing authority of the county. If an elected official of such county, municipal corporation, local school system, or consolidated government or constitutional officer promulgates specific policies regarding the use of such government purchasing cards or government credit cards, such policies shall include the following:

(1) Designation of officials who shall be authorized to be issued such government purchasing cards or government credit cards;

(2) A requirement that, before being issued a government purchasing card or government credit card, authorized users shall sign and accept an agreement with the county, municipal corporation, local school system, consolidated government, or constitutional officer issuing the government purchasing card or government credit card that such users will use such cards only in accordance with the policies of the issuing governmental entity or constitutional officer;

(3) Transaction limits for the use of such cards;

(4) A description of purchases that shall be authorized for use of such cards;

(5) A description of purchases that shall not be authorized for use of such cards;

(6) Designation of a government purchasing card or government credit card administrator;

(7) A process for auditing and reviewing purchases made with such cards; and

(8) Procedures for addressing a violation of such purchasing card or credit card policies and imposing penalties for violations, including, but not limited to, revocation of purchasing card or credit card privileges. Nothing in such procedures or any administrative action taken pursuant thereto shall preclude any other civil or criminal remedy under any other provision of law. (Code 1981, § 36-80-24, enacted by Ga. L. 2015, p. 266, § 5/HB 192; Ga. L. 2016, p. 558, § 2/HB 949.)

Effective date. — This Code section became effective July 1, 2015.

The 2016 amendment, effective July 1, 2016, added subsection (a); redesignated former subsections (a) through (c) as present subsections (b) through (d), respectively; in subsection (b), inserted "or a constitutional officer" in the introductory paragraph, inserted "or constitutional officer's" in paragraph (b)(1), and, in paragraph (b)(2), deleted "or" preceding "consolidated government", and added ", or constitutional officer" at the end; in subsection (c), inserted "or constitutional officers"; substituted the present provisions of the introductory paragraph of subsection (d) for the former provisions, which read: "No such county, municipal corporation, local school system, or consolidated government shall issue government purchasing cards or government credit cards to elected officials on or after January 1, 2016, until the governing authority of such county, municipal corporation, local school system, or consolidated government, by public vote, has authorized such issuance and has promulgated specific policies regarding the use of such government purchasing cards or government credit cards for elected officials of such county, municipal corporation, local school system, or consolidated government. Such policies shall include the following:"; in paragraph (d)(2), deleted "or" preceding "consolidated government", inserted ", or constitutional officer" in the middle, and added "or constitutional officer" at the end; and, in paragraph (d)(8), inserted a comma following "violations" in the middle of the first sentence.

Cross references. — Misuse of government issued credit cards, § 16-9-37.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, "such policies" was substituted for "such, policies" in the last sentence of subsection (d).

36-80-25. Financing of public projects by local entities.

(a) As used in this Code section, the term "project" means and includes hospitals, health care facilities, dormitories, office buildings, clinics, housing accommodations, nursing homes, rehabilitation centers, extended care facilities, and other health related facilities, whether public or private.

(b) To the extent that the Constitution of Georgia permits the General Assembly by law to further define the powers and duties of any

local government authority, as defined in Code Section 36-80-16, whose purpose includes the public purpose of developing or promoting trade, commerce, or industry, and to enlarge or restrict the same, each such local government authority is authorized and shall have the power to finance (by loan, grant, lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage projects and to pay the cost of any project from the proceeds of revenue bonds of such a local government authority or any other funds of such local government authority, or from any contributions or loans by persons, corporations, limited or general partnerships, or other entities, all of which such a local government authority is authorized to receive, accept, and use. To the extent that any project serves a governmental function, the General Assembly finds and determines that such a project by its nature comprises both public and private components that are integrated so as to produce the desired public purpose and that therefore carrying out such a project is proper and authorized for such a local government authority under the Constitution of Georgia. (Code 1981, § 36-80-25, enacted by Ga. L. 2015, p. 266, § 6/HB 192.)

Effective date. — This Code section became effective July 1, 2015.

Cross references. — State debt, Ga. Const. 1983, Art. VII, Sec. IV.

36-80-26. (Effective January 1, 2019) Multi-county community improvement districts for transit projects.

(a) For purposes of this Code section, the term:

(1) "County" means any county created under the Constitution or laws of this state.

(2) "Regional transit plan" means the official multiyear plan for transit services and facilities adopted pursuant to Code Section 50-39-12.

(3) "Transit" means regular, continuing shared-ride or shared-use surface transportation services that are made available by a public entity and are open to the general public or open to a segment of the general public defined by age, disability, or low income. Such term includes services or systems operated by or under contract with the state, a public agency or authority, a county or municipality, a community improvement district, or any other similar public entity of this state and all accompanying infrastructure and services necessary to provide access to these modes of transportation. Such term excludes charter or sightseeing services, school bus services, courtesy shuttle and intra-facility or terminal services, limousine carriers, and ride share network services, transportation referral services, and taxi services not paid for by a public entity.

(4) "Transit projects" means and includes purposes to establish, enhance, operate, and maintain, or improve access to transit, including general obligation debt and other multiyear obligations issued to finance such projects.

(b) A community improvement district for the purpose of the provision of transit projects which are wholly or partially located in more than one county may be created under the authority granted in and consistent with the processes set forth in Section VII of Article IX of the Georgia Constitution. Any such multi-county community improvement district may be authorized to be created upon the passage of a local act of the General Assembly by each county in which such community improvement district is to be wholly or partially located. The transit projects to be provided by such community improvement district shall be projects included in the regional transit plan and through agreement with the Atlanta-region Transit Link "ATL" Authority. The administrative body of any such community improvement district shall include one member appointed by the governing authority of each county or municipality which is located wholly or partially within such community improvement district. (Code 1981, § 36-80-26, enacted by Ga. L. 2018, p. 377, § 1-1/HB 930.)

Effective date. — This Code section becomes effective January 1, 2019.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, Code Section 36-80-26, as enacted by Ga. L. 2018, p. 926, § 1/HB 489, was redesignated as Code Section 36-80-27.

Editor's notes. — Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of the Act becomes effective January 1, 2019.

36-80-27. Advertisement of bid or proposal opportunities.

If a bid or proposal opportunity is extended by a county, municipal corporation, or local board of education for goods and services valued at $10,000.00 or more or if a bid or proposal opportunity is extended for public works construction contracts subject to Chapter 91 of this title, such bid or proposal opportunity shall be advertised by such respective local governmental entity in the Georgia Procurement Registry, as established in subsection (b) of Code Section 50-5-69, at no cost to the local governmental entity. Such bid opportunity may also be advertised in the official legal organ of the county, municipal corporation, or local board of education in the same manner as required by Code Section 36-91-20 or other media normally utilized by the local governmental entity when advertising bid opportunities, including the Internet website of the local governmental entity. Each advertisement shall include such details and specifications as will enable the public to know

the extent and character of the bid opportunity. (Code 1981, § 36-80-27, enacted by Ga. L. 2018, p. 926, § 1/HB 489.)

Effective date. — This Code section became effective July 1, 2018.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, Code Section 36-80-26, as enacted by Ga. L. 2018, p. 926, § 1/HB 489, was redesignated as Code Section 36-80-27.

CHAPTER 81

BUDGETS AND AUDITS

Article 1

Local Government Budgets and Audits

Sec.
36-81-8. Annual local government finances reports and local independent authority indebtedness reports; assistance by Department of Community Affairs; community indicators report.
36-81-8.1. Definitions; grant certification forms; filing with state auditor; forfeiture of funds for noncompliance; no exemption from liability.

36-81-3. Establishment of fiscal year; requirement of annual balanced budget; adoption of budget ordinances or resolutions generally; budget amendments; uniform chart of accounts.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state constitutional and statutory balanced budget provisions, 82 A.L.R.6th 497.

36-81-8. Annual local government finances reports and local independent authority indebtedness reports; assistance by Department of Community Affairs; community indicators report.

(a) As used in this Code section, the term "local independent authority" means each local public body corporate and politic created in and for a county, municipality, consolidated government, or combination thereof, which is authorized to issue bonds under the Constitution and laws of this state.

(b)(1)(A) Each unit of local government shall submit an annual report of local government finances to the Department of Community Affairs. The report shall include the revenues, expenditures, assets, and debts of all funds and agencies of the local government, and other such information as may be reasonably requested by the department. Such annual report shall further identify the total amount of speeding fine revenue collected by the local government.

(B) Each unit of local government which levies a tax pursuant to Article 3 of Chapter 13 of Title 48 shall also submit a schedule of all revenues therefrom which are expended for the promotion of tourism, conventions, and trade shows or any other tourism related purpose which is specified under Code Section 48-13-51. Such schedule shall identify both the project or projects involved and the contracted entity involved in each such expenditure.

(2) Each local independent authority shall submit an annual report of indebtedness to the Department of Community Affairs. Such report shall include the revenues, expenditures, assets, and debts of all funds of the local independent authority and shall describe any actions taken by such local independent authority to incur indebtedness.

(3) The local government finances report and the local independent authority indebtedness report shall be filed on forms promulgated by the department and shall be submitted within the requested time periods established by the department.

(c) The department shall have the authority to require local governments and local independent authorities to submit the reports as provided for in subsection (b) of this Code section as a condition of such local government or local independent authority receiving state appropriated funds from the department. Furthermore, a local government authority or a local independent authority shall not incur debt or credit obligations until such time as it meets such reporting requirement. Failure to comply with the reporting requirement shall have no adverse effect on any outstanding debt or credit obligation of any local government authority or local independent authority. Upon the receipt of the report of local government finance from a local government or the report of local independent authority debt from a local independent authority, the department is authorized to release any state appropriated grant funds that may be due at such time to the local government or the local independent authority.

(d) The department's implementation of subsections (b) and (c) of this Code section shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and the department is specifically directed to promulgate the forms provided for in subsection (b) of this

Code section in the manner provided for promulgation of rules under Chapter 13 of Title 50.

(e) Utilizing information contained in audit reports of local governments filed with the state auditor, the report of county or municipal finances filed with the Department of Community Affairs, and other available state or federal information of public record, the Department of Community Affairs shall prepare annually a report on local government finances. Utilizing information contained in reports of indebtedness returned to the Department of Community Affairs, the Department of Community Affairs shall prepare annually a report on indebtedness of local independent authorities. The local government finances report shall be filed on January 15 of each year, beginning January 15, 1985, and the local independent authority indebtedness report shall be filed on January 15 of each year, beginning January 1, 1990, with the Governor, the Speaker of the House of Representatives, the President of the Senate, the chairman of the House Ways and Means Committee, the chairman of the House State Planning and Community Affairs Committee, the chairman of the Senate Finance Committee, and the chairman of the Senate State and Local Governmental Operations Committee, as well as with the chief elected official or chief appointed official of each local unit of government and each local independent authority and member of the General Assembly upon request.

(f) The local government finances report and the local independent authority indebtedness report shall be organized, within the limits of available resources, in such a manner as to allow for reasonable comparative analysis of local government revenues and expenditures and for reasonable comparative analysis of local independent authority debt.

(g) The department, in addition to its other duties, shall assist local units of government and local independent authorities in fulfilling the requirements of this article. The department shall coordinate its technical assistance efforts with the state auditor, the University System of Georgia, the Association County Commissioners of Georgia, the Georgia Municipal Association, and the Georgia Society of Certified Public Accountants and should coordinate with any other organizations interested and currently active in local government financial management so as to ensure that coordination of training and assistance is maintained. The department may contract or subcontract with other public or private agencies to provide assistance to local units of government or local independent authorities.

(h) The department, either in conjunction with the local government finances report or separately, shall prepare a community indicators report for each local unit of government having annual expenditures of

$250,000.00 or more as indicated pursuant to the most recent Report of Local Government Finances. The community indicators report shall include data on local government services, administration, and community characteristics. The department shall have the authority to require local governments to submit reports on local government services and operations as a condition of such local government receiving state appropriated funds from the department. Such reports shall be obtained utilizing the local government finance survey as provided in subsection (b) of this Code section and the local government operations survey collected by the department. The department shall develop the community indicators report in cooperation with the Association County Commissioners of Georgia and the Georgia Municipal Association and shall prepare the report on or before December 31, 1998, and annually thereafter. (Ga. L. 1980, p. 1738, § 9; Ga. L. 1982, p. 3, § 36; Ga. L. 1984, p. 818, §§ 5, 6; Ga. L. 1986, p. 10, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 1393, § 1; Ga. L. 1989, p. 908, § 1; Ga. L. 1992, p. 6, § 36; Ga. L. 1995, p. 10, § 36; Ga. L. 1997, p. 1575, § 3; Ga. L. 2004, p. 403, § 4; Ga. L. 2009, p. 303, § 11/HB 117; Ga. L. 2015, p. 1064, § 1/SB 134; Ga. L. 2018, p. 158, § 2/HB 257.)

The 2015 amendment, effective July 1, 2015, added the last sentence of subparagraph (b)(1)(A).

The 2018 amendment, effective July 1, 2018, added the second and third sentences of subsection (c).

36-81-8.1. Definitions; grant certification forms; filing with state auditor; forfeiture of funds for noncompliance; no exemption from liability.

(a) As used in this Code section, the term:

(1) "Subrecipient" means an entity that receives a grant of state funds from the Governor's emergency fund or from a special project appropriation through a local government and shall also mean an entity which in turn receives all or any portion of such grant funds from a subrecipient.

(2) "Unit of local government" means, for purposes of this Code section and notwithstanding paragraph (16) of Code Section 36-81-2, a:

(A) Municipality, county, consolidated government, county school district, independent school district, other political subdivision of the state, any public agency or authority of any of the foregoing, or any combination of any of the foregoing;

(B) Regional commission;

(C) Public authority created by local Act or local constitutional amendment of the General Assembly; or

(D) Public authority created by general law which applies to an area of less than the entire state and which requires activation by a county or municipal government.

(b) Each grant of state funds to a recipient unit of local government from the Governor's emergency fund or from a special project appropriation in an amount greater than $5,000.00 shall be conditioned upon the receipt by the state auditor of a properly completed grant certification form. The form shall be designed by the state auditor and shall be distributed with each covered grant as required by this Code section. The grant certification form shall require the certification by the recipient unit of local government and by the unit of local government auditor that the grant funds were used solely for the express purpose or purposes for which the grant was made. Such form shall be filed with the state auditor in conjunction with the annual audit required under Code Section 36-81-7 or 50-6-6 or any other applicable Code section for each year in which such grant funds are expended or remain unexpended by the unit of local government. A recipient unit of local government which is not otherwise subject to the annual audit requirements specified in this subsection shall file a grant certification form with the state auditor no later than December 31 of each year in which such grant funds are expended or remain unexpended. For grant funds to subrecipients, the certification by the unit of local government auditor required by this subsection may also be made by an in-house or internal auditor of the unit of local government who meets the education requirements contained in subparagraph (b)(3)(A) of Code Section 43-3-9. The cost of performing any audit required by this subsection or paragraph (1) of subsection (d) of this Code section shall be an eligible expense of the grant. However, the amount charged shall not exceed 2 percent of the amount of the grant or $250.00 per required audit, whichever is less. The unit of local government to whom the grant is made may deduct the cost of any such audit from the funds disbursed to the subrecipient.

(c) Where the grant of state funds is for $5,000.00 or less, the grant shall require submission to the state auditor of a properly completed grant certification form as required by subsection (b) of this Code section except that only the unit of local government need certify that the grant funds were used solely for the express purpose or purposes for which the grant was made. However, where such grant is to a subrecipient, the grant shall require submission to the unit of local government of a notarized affidavit executed by the executive director, president, chairperson, chief executive officer, or other responsible party representing the subrecipient, by whatever name or title, to whom the grant funds are disbursed. The affidavit shall certify under oath that the funds were used solely for the express purpose or purposes for which the grant was made. Such affidavit shall be submitted

annually for each year that grant funds are expended or remain unexpended according to a schedule established by the unit of local government and shall be made on a form designed by the state auditor and distributed with each covered grant as required by this Code section.

(d)(1) Notwithstanding subsection (b) or (c) of this Code section, the Governor, the Appropriations Committee of the House of Representatives, or the Appropriations Committee of the Senate shall have the right and authority to direct and require any recipient unit of local government to obtain or perform an audit of any grant of state funds from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(2) Notwithstanding subsection (b) or (c) of this Code section, a recipient unit of local government shall have the right or authority to obtain or perform an audit of any grant of state funds to a subrecipient from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(e) The failure to comply with the requirements of this Code section shall result in a forfeiture of a state grant and the return to the state of any such grant funds which have been received by the unit of local government. In the case of a state grant awarded to a subrecipient, the subrecipient shall be responsible for the return to the state of any such grant funds if it is determined that the funds were not used for the express purpose or purposes for which the grant was made. A grant recipient or subrecipient shall be ineligible to receive funds from the Governor's emergency fund or from a special project appropriation until all unallowed expenditures are returned to the state, except that a recipient unit of local government shall not be ineligible for such funds where a subrecipient has not used funds it received for the express purpose or purposes for which the grant was made.

(f) No subrecipient shall be considered an agent of the unit of local government or be indemnified or held harmless by the unit of local government for any negligence, misfeasance, or malfeasance of the subrecipient, and a recipient unit of local government shall not be liable for any expenditure of state grant funds by a subrecipient. (Code 1981, § 36-81-8.1, enacted by Ga. L. 1998, p. 1611, § 5; Ga. L. 2003, p. 811, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2006, p. 718, § 1/SB 202; Ga. L. 2008, p. 181, § 16/HB 1216; Ga. L. 2014, p. 136, § 2-2/HB 291.)

The 2014 amendment, effective July 1, 2014, substituted "subparagraph (b)(3)(A) of Code Section 43-3-9" for "subparagraph (a)(3)(A) of Code Section 43-3-6" in the sixth sentence of subsection (b).

CHAPTER 82

BONDS

Article 1

General Provisions

Sec.
36-82-1. Election for bonded debt; right to sell bonds at discount; advertisements as binding statements of intention; use of surpluses; meetings open to public; refunding.

ARTICLE 1

GENERAL PROVISIONS

36-82-1. Election for bonded debt; right to sell bonds at discount; advertisements as binding statements of intention; use of surpluses; meetings open to public; refunding.

(a) When any county, municipal corporation, or political subdivision desires to incur any bonded debt, as permitted by the Constitution of Georgia, the election required shall be called and held in accordance with this Code section and Code Sections 36-82-2 through 36-82-4.

(b) The officers charged with levying taxes, contracting debts, and the like for the county, municipal corporation, or political subdivision shall give notice for not less than 30 days immediately preceding the day of the election in the newspaper in which sheriff's advertisements for the county are published, notifying the qualified voters that on the day named an election will be held to determine the question of whether bonds shall be issued by the county, municipal corporation, or political subdivision. The notice shall specify the principal amount of the bonds to be issued, the purpose for which the bonds are issued, the interest rate or rates which such bonds are to bear, and the amount of principal to be paid in each year during the life of the bonds. The notice, in the discretion of the issuing body, in lieu of specifying the rate or rates of interest which the bonds are to bear, may state that the bonds, when issued, will bear interest at a rate not exceeding a maximum per annum rate of interest specified in the election notice or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the election notice.

(c) Nothing contained in this Code section shall be construed as prohibiting or restricting the right of the issuing body to sell bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in the election notice.

(d) Every legal advertisement of a bond election shall contain a reference that any brochures, listings, or other advertisements issued by the governing body of any county, municipality, or other political subdivision of this state or by any other person, firm, corporation, or association with the knowledge and consent of the governing body of such county, municipality, or other political subdivision of this state shall be deemed to be a statement of intention of the governing body of such county, municipality, or other political subdivision of this state concerning the use of the bond funds; and such statement of intention shall be binding on the governing body of such county, municipality, or other political subdivision of this state in the expenditure of any such bond funds or interest received from such bond funds which have been invested, unless the governing body of such county, municipality, or other political subdivision of this state uses such bond funds for the retirement of bonded indebtedness, in the manner provided for in this Code section; and such statement of intention shall be set forth in the resolution pursuant to which such bonds are issued. Bond funds and interest received from such bond funds which have been invested shall be expended in the manner in which advertised and for the purpose stated in such statement of intention. The governing body of such county, municipality, or other political subdivision of this state may, by a two-thirds' vote, declare any project which has been established pursuant to any such statement of intention to be unnecessary. In that event, the governing body of such county, municipality, or other political subdivision of this state shall use such bond funds for the payment of all or any part of the principal and interest on any bonded indebtedness of such county, municipality, or other political subdivision of this state then outstanding. Surpluses from the overestimated projects, including interest received on bond funds of such projects, shall be used first to complete underestimated projects and all remaining funds received from interest and overestimated projects shall be used for other projects or improvements which the governing body of such county, municipality, or other political subdivision of this state may deem necessary and which are encompassed within the language of the statement of purpose in the election notice. Any meetings of any governing bodies at which any bond fund allocation is made shall be open to the public. Such meetings shall be announced to the news media in advance and shall be open to the news media.

(e)(1) It is expressly provided that any county, municipality, or other political subdivision of this state may provide for the refunding of all or any part of the outstanding bonded indebtedness of such county, municipality, or political subdivision without the necessity of a referendum therefor if the governing authority of such county, municipality, or political subdivision adopts a resolution or ordinance authorizing the issuance of general obligation refunding bonds for such purpose, provided the following conditions are met:

(A) The term of the refunding bonds shall not extend beyond the final maturity date of the bonds being refunded;

(B) The rate of interest borne by the refunding bonds shall not exceed the rate of interest borne by the bonds being refunded;

(C) The principal amount of the refunding bonds may only exceed the principal amount of the bonds being refunded to the extent necessary to effectuate a refund and to allow the reduction of the total principal and interest requirements over the remaining term of the bonds being refunded; and

(D) The proceeds derived from the sale of the refunding bonds, together with the earnings and increments derived therefrom, if any, will be sufficient to provide for the payment of the principal of, interest, and premium, if any, on the bonds being refunded and shall be deposited in an irrevocable trust fund created for that purpose.

(2) Such refunding bonds so authorized to be issued in compliance with the conditions set forth above, when issued, shall be construed and deemed to be issued in lieu of such original debt being so refunded, and the original debt upon the creation of the irrevocable trust fund and the deposit of the requisite proceeds shall not constitute a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia, but the refunding bonds shall constitute a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia and shall count against the limitation on debt measured by the 10 percent of assessed value of taxable property as expressed therein.

(f) Any person who violates this Code section shall be guilty of a misdemeanor; provided, however, nothing contained in this Code section shall be construed so that a violation thereof shall affect the validity of any bonds issued under this Code section. (Ga. L. 1878-79, p. 40, § 1; Code 1882, § 508i; Civil Code 1895, § 377; Civil Code 1910, § 440; Code 1933, § 87-201; Ga. L. 1960, p. 1032, § 1; Ga. L. 1968, p. 1007, § 1; Ga. L. 1976, p. 1091, § 1; Ga. L. 1981, p. 1581, § 1; Ga. L. 1982, p. 2107, § 43; Ga. L. 1984, p. 22, § 36; Ga. L. 1984, p. 1362, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 886, § 1; Ga. L. 1992, p. 2052, § 1; Ga. L. 1995, p. 355, § 1; Ga. L. 2002, p. 1473, § 1; Ga. L. 2014, p. 216, § 1/HB 834.)

The 2014 amendment, effective April 15, 2014, deleted former subsection (b.1), which read: "In all counties of this state having a population of 800,000 or more according to the United States decennial census of 2000 or any future such census, no county-wide bond election or school bond election in the unincorporated area of any such county shall be held on any date other than the date of the November general election; provided, however, that upon a determination by any superior court of competent jurisdiction that the holding of such election on the date of the

November general election would cause irreparable harm to the electors of any such county, such election shall be held in the manner provided for in subsection (b) of this Code section."

ARTICLE 3

REVENUE BONDS

36-82-60. Short title.

JUDICIAL DECISIONS

Standing to challenge bond validation. — Appeal filed by challengers to a trial court judgment confirming and validating a city's bond issuance was dismissed because the challengers failed to present any evidence to establish the challengers' standing under O.C.G.A. § 36-82-77(a) to become parties in the bond validation proceeding; thus, the challengers lacked standing to appeal the judgment in that proceeding. Sherman v. City of Atlanta, 317 Ga. 345, 730 S.E.2d 113 (2013).

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

36-82-61. Definitions.

JUDICIAL DECISIONS

Hotel/motel tax proceeds were revenue. — Hotel/motel tax funding agreement for a stadium project worked with a bond proceeds funding agreement to ensure that the stadium's tax proceeds were expended consistent with O.C.G.A. § 48-13-51(a)(5)(B), and there was no requirement that the development authority own the stadium for the tax proceeds to be considered as part of the revenue to pay for the bonds: under O.C.G.A. § 36-82-61(3), "revenue" included revenues arising out of or in connection with the operation or ownership of the stadium. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616 (2015).

36-82-66. Governmental liability for payment of bonds; recitation on bond.

JUDICIAL DECISIONS

Development authority not required to own or operate project. — Proposed bond transaction did not violate Ga. Const. 1983, Art. IX, Sec. VI, Para. I and O.C.G.A. § 36-82-66 of the Revenue Bond Law merely because the development authority would not own or operate the proposed stadium; the development authority could use bond proceeds for paying all or part of the cost of any project (O.C.G.A. § 36-62-6(a)(13)), not only those projects the authority developed, and the authority could pay the costs of another government entity's project pur-

suant to O.C.G.A. § 36-62-9. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616 (2015).

36-82-74. Notice to district attorney or Attorney General of resolution authorizing revenue bonds.

JUDICIAL DECISIONS

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113 (2012).

36-82-76. Notice of hearing on validation.

JUDICIAL DECISIONS

Notice sufficient. — Although a scrivener's error stated that the hearing would regard the validation of a bond issued by the county industrial building authority, because the notice made clear that it was meant to refer to a case involving the airport authority, not the industrial building authority, the notice of the bond validation hearing was sufficient as the record supported a finding of substantial compliance. Avery v. State of Ga., 295 Ga. 630, 761 S.E.2d 56 (2014).

36-82-77. Hearing and judgment on validation; parties to proceedings; right of appeal; review of valuation of existing undertakings.

JUDICIAL DECISIONS

Standing to challenge bond validation. — Appeal filed by challengers to a trial court judgment confirming and validating a city's bond issuance was dismissed because the challengers failed to present any evidence to establish the challengers standing under O.C.G.A. § 36-82-77(a) to become parties in the bond validation proceeding; thus, the challengers lacked standing to appeal the judgment in that proceeding. Sherman v. City of Atlanta, 317 Ga. 345, 730 S.E.2d 113 (2013).

Attorney who intervened in a bond validation proceeding pursuant to O.C.G.A. § 36-82-77(a) and then offered to withdraw the attorney's objections if the developers paid the attorney a substantial amount of money did not violate Ga. St. Bar R. 4-102(d):4.2(a) or Ga. St. Bar. R. 4-102(d):8.4(a)(4) because the attorney's conduct was not fraudulent; a party could intervene for ulterior and personal reasons and still have standing. In the Matter of Woodham, 296 Ga. 618, 769 S.E.2d 353 (2015).

Validity of agreement proper subject for superior court. — Superior court had authority to adjudicate the validity of a Hotel/Motel Tax Operation and Maintenance Agreement for a stadium project even though the agreement did not act as security for the bonds, based on the court's jurisdiction to hear and determine

all questions of law and of fact in the bond validation case and render judgment on those issues, pursuant to O.C.G.A. § 36-82-77. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616 (2015).

Intervention in bond validation proceeding. — Challenger in an action validating and confirming taxable revenue bonds lacked standing to intervene in the action as a result of failing to comply with the intervention procedures set forth in O.C.G.A. § 9-11-24(c); and, because the challenger lacked standing to become a party in the trial court, the challenger also lacked standing to appeal the trial court's judgment, therefore, the appeal was dismissed. Sherman v. Dev. Auth., 324 Ga. App. 23, 749 S.E.2d 29 (2013).

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113 (2012).

36-82-78. Effect of judgment of validation.

JUDICIAL DECISIONS

Conclusiveness of validation judgment.

Hospital authority's leasehold interest in a continuing care retirement facility was public property exempt from ad valorem taxation under O.C.G.A. § 48-5-41(a)(1); an earlier, unappealed superior court bond validation order found that it was a public project within the scope of the Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., and this finding was final and binding. Columbus, Ga. Bd. of Tax Assessors v. Medical Ctr. Hosp. Auth., 338 Ga. App. 302, 788 S.E.2d 879 (2016).

Validation not conclusive as to tax exemption as public property. — Two bond validation orders pertaining to a hospital authority's establishment of a continuing care retirement center did not conclusively determine, for purposes of O.C.G.A. § 48-5-41(a)(1)(A), that the property was public property exempt from ad valorem taxation; remand was required for the trial court to address taxability. Columbus Board of Tax Assessors v. Medical Ctr. Hosp. Auth., 302 Ga. 358, 806 S.E.2d 525 (2017).

Cited in Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

36-82-85. Construction of article generally; applicability of certain other provisions of law.

JUDICIAL DECISIONS

Cited in Sherman v. City of Atlanta, 317 Ga. 345, 730 S.E.2d 113 (2013).

CHAPTER 83

LOCAL GOVERNMENT INVESTMENT POOL

Sec.
36-83-8. Local government investment pool.

36-83-8. Local government investment pool.

(a) A local government investment pool is created, consisting of the aggregate of all funds from local governments and all funds from other bodies created for a public purpose which the State Depository Board has agreed to accept that are placed in the custody of the state for investment and reinvestment as provided in this chapter.

(b)(1) The investment policies for the local government investment pool shall be established by the State Depository Board.

(2) The state treasurer shall administer the local government investment pool on behalf of the participating local governments.

(3) The state treasurer shall develop such procedures consistent with the policies established pursuant to paragraph (1) of this subsection as he deems necessary for the efficient administration of the pool, including, but not limited to:

(A) Specification of minimum amounts which may be deposited in the pool and minimum periods of time for which deposits shall be retained in the pool;

(B) Payment of amounts equivalent to administrative expenses from the earnings of the pool;

(C) Distribution of the earnings in excess of such expenses or allocation of losses to the several participants, in a manner which equitably reflects the differing amount of their respective investments and the differing periods of time for which such amounts were in the custody of the pool; and

(D) Procedures for the deposit and withdrawal of funds.

(c) The state treasurer shall invest moneys in the local government investment pool with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering first the probable safety of their capital and then the probable income to be derived. Specifically, the types of authorized investments for pool assets shall be limited to those set forth in Code Section 50-5A-7 and Chapter 17 of Title 50.

(d)(1) The governing authority of any local government having funds which are available for investment and which are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its financial officer to remit such funds to the state treasurer for investment as part of the local government investment pool.

(2) Upon determination by the local governing authority that it is in the best interest of the local government to deposit funds in the investment pool, it shall adopt and file with the state treasurer a certified copy of a resolution or ordinance authorizing investment of its funds in the investment pool. The resolution or ordinance shall name the local government official or officials responsible for the deposit and withdrawal of such funds.

(3) The resolution or ordinance filed with the state treasurer shall be accompanied by a statement as to the approximate cash flow requirements of the local government for the invested funds. Subsequent deposits into the investment pool shall be accompanied by a statement as to the intended duration of the investment or the anticipated date of withdrawal of the funds from the pool.

(e) A separate account designated by name or number for each participant in the fund shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report showing the changes in investments made during the preceding month shall be furnished to each participant having a beneficial interest in the investment pool. Details of any investment transaction shall be furnished to any participant upon request.

(f) The principal and credited income of each account maintained for a participant in the investment pool shall be subject to payment from the pool at any time upon request, subject to the procedures developed in accordance with paragraph (3) of subsection (b) of this Code section. Accumulated income shall be credited to each participant account at least monthly.

(g) Except as provided in this Code section, all instruments of title of all investments of the investment pool shall remain in the custody of the state treasurer. The state treasurer may deposit with one or more fiscal agents or banks those instruments of title which he considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income or of the proceeds of sale. The state treasurer shall collect the principal and interest or other income from investments of the investment pool the instruments of title to which are in his custody, when due and payable.

(h) In the event of default in the payment of the principal or interest or other income of any investment of the investment pool, the state treasurer may:

(1) Institute the proper proceedings to collect the matured principal or interest or other income;

(2) Accept for exchange purposes refunding bonds or other evidences of indebtedness, at interest rates to be agreed upon by the state treasurer and the obligor;

(3) Make compromises, adjustments, or disposition of the matured principal or interest or other income, as the state treasurer considers advisable for the purpose of protecting the moneys invested; or

(4) Make compromises or adjustments as to future payments of principal or interest or other income, as the state treasurer considers advisable for the purpose of protecting the moneys invested.

(i) No payment may be issued upon any account in an amount greater than the sum total of the particular account to which it applies. If such payment is issued, the state treasurer shall be personally liable under his official bond for the entire overdraft resulting from the payment if made.

(j) Subject to the objectives and requirements of this Code section, the state treasurer shall formulate procedures for the investment and reinvestment of funds in the investment pool and the acquisition, retention, management, and disposition of investments of the investment pool.

(k) Funds in the local government investment pool may be consolidated with state funds under the control of the state treasurer for investment purposes, if accurate and detailed accounting records are maintained for the funds of each participating local government and a proportionate amount of interest earned is credited to the local government investment pool and the accounts therein. The state treasurer may also place the funds in a separate trust fund to be administered by the state treasurer pursuant to policies established by the State Depository Board.

(l) Payments of amounts for administrative expenses shall be deemed contractually obligated funds held in trust for the benefit of the local government investment pool and shall not lapse. (Ga. L. 1980, p. 1715, § 8; Ga. L. 1986, p. 205, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 1474, § 4; Ga. L. 2010, p. 863, §§ 3, 4/SB 296; Ga. L. 2015, p. 826, § 1/HB 95.)

The 2015 amendment, effective July 1, 2015, added the last sentence in subsection (k).

CHAPTER 85

INTERLOCAL RISK MANAGEMENT AGENCIES

Sec.
36-85-1. Definitions.
36-85-2. Formation; functions; counties and municipalities as separate classes; agreements creating agencies; files of administrator are sole property of agency.
36-85-5. Certificate of authority; application.

36-85-1. Definitions.

As used in this chapter, the term:

(1) "Administrator" means any person who administers a group self-insurance fund other than the interlocal risk management agency.

(2) "Commissioner" means the Commissioner of Insurance.

(3) "County" means any county of the State of Georgia. Such term shall include any public authority, commission, board, or similar agency which is created by local or general Act of the General Assembly and which carries out its functions on a county-wide basis or wholly within the unincorporated area of a county. The term shall also include any such body which is created or activated by a resolution or ordinance of the governing body of the county individually or jointly with other political subdivisions of the state.

(4) "General liability" means liability for bodily injury, death, or damage to property owned by others to which a municipality or county may be subject either directly or by reason of liability arising out of an act, error, or omission of its employee, agent, or officer in the course and scope of employment.

(5) "Governing authority" means the body which exercises the legislative functions of the municipality or county.

(6) "Group self-insurance fund" or "fund" means a pool of public moneys established by an interlocal risk management agency from contributions of its members in order to pool the risks of accident, disability, supplemental medical, general liability, motor vehicle liability, property damage, or any combination of such risks.

(7) "Interlocal risk management agency" or "agency" means an association formed by municipalities or counties by the execution of an intergovernmental contract for the development and administration of an interlocal risk management program and one or more group self-insurance funds.

(8) "Interlocal risk management program" means a plan and activities carried out under such plan by an interlocal risk manage-

ment agency to reduce risk of loss on account of accident, disability, supplemental medical, general liability, motor vehicle liability, or property damage, including safety engineering and other loss prevention and control techniques, and to administer one or more group self-insurance funds, including the processing and defense of claims brought against members of the agency.

(9) "Motor vehicle liability" means liability to which a municipality or county may be subject either directly or by reason of liability arising out of the use of a motor vehicle by its employee, agent, or officer in the course and scope of employment. Said term shall also include loss on account of property damage to motor vehicles.

(10) "Municipality" means a municipal corporation of the State of Georgia. Such term shall include any public authority, commission, board, or similar agency which is created by general or local Act of the General Assembly and which carries out its functions wholly or partly within the boundaries of the municipality. The term shall also include such bodies which are created or activated by an ordinance or resolution of the governing body of the municipality individually or jointly with other political subdivisions of the state. The term shall also include any independent school system of this state which elects to participate in the interlocal risk management agency comprised of municipalities; provided, however, such independent school system must have a full-time equivalent student count of at least 2,800 in order to elect to become a member of the interlocal risk management agency comprised of municipalities.

(11) "Property damage" means loss to which a municipality or county may be subject by reason of physical damage or destruction to real or personal property owned or leased by such municipality or county. (Code 1981, § 36-85-1, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 1; Ga. L. 1991, p. 717, § 2; Ga. L. 2017, p. 336, § 2/HB 146.)

The 2017 amendment, effective January 1, 2018, inserted "accident, disability, supplemental medical," in the middle of paragraphs (6) and (8).

36-85-2. Formation; functions; counties and municipalities as separate classes; agreements creating agencies; files of administrator are sole property of agency.

(a) A group of municipalities or a group of counties may execute an intergovernmental contract among themselves to form and become members of an interlocal risk management agency. After an interlocal risk management agency has been formed, any municipality or county may, subject to the bylaws and requirements of such agency, become a member and, through participation in the agency, may:

(1) Pool its general liability risks in whole or in part with those of other municipalities or counties;

(2) Pool its motor vehicle liability risks in whole or in part with those of other municipalities or counties;

(3) Pool its property damage risks in whole or in part with those of other municipalities or counties; or

(4) Jointly purchase accident, disability, supplemental medical, general liability, motor vehicle liability, or property damage insurance with other municipalities or counties participating in and belonging to the interlocal risk management agency, the participating municipalities or counties to be coinsured under a master policy or policies with the total premium apportioned among such participants.

(b) For the purposes of this chapter, municipalities and counties shall be deemed to constitute separate classes, and no member of any one such class shall join with a member of another class for the purpose of creating an interlocal risk management agency. There shall be only one interlocal risk management agency established for each class; provided, however, if the Commissioner determines that there are special or unique circumstances or needs of a group of counties or municipalities which justify the establishment of an additional interlocal risk management agency or agencies, he may authorize the establishment of such additional agency or agencies. Each agency may establish such group self-insurance funds as may be authorized by the Commissioner of Insurance.

(c) All arrangements and agreements made under the authority of this chapter shall be in writing. A municipality or county may become a member of an interlocal risk management agency by the adoption of a resolution or ordinance by the governing authority of the municipality or county. The interlocal risk management agency shall operate under such name and style as shall be provided in the intergovernmental contract creating such agency and shall have the power to bring and defend actions in all courts.

(d) All books, records, and files maintained by any administrator of any fund established by the agency, including but not limited to audit data and all active and inactive claim files, shall at all times be the sole property of the agency and shall be surrendered immediately to the agency upon demand. (Code 1981, § 36-85-2, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 2; Ga. L. 2017, p. 336, § 3/HB 146.)

The 2017 amendment, effective January 1, 2018, inserted "accident, disability, supplemental medical," near the beginning of paragraph (a)(4).

36-85-5. Certificate of authority; application.

(a) No interlocal risk management agency shall establish a group self-insurance fund or funds until such agency has been issued a certificate of authority by the Commissioner of Insurance as provided in this Code section and under such rules and regulations as the Commissioner may promulgate to assure compliance with this chapter.

(b) The Commissioner shall not be authorized to issue any certificate of authority pursuant to this Code section prior to April 30, 1987. Any application for a certificate of authority pursuant to this Code section which is filed prior to March 1, 1987, shall be updated by the applicant in order to comply with any statute, rule, or regulation which may be promulgated or enacted prior to the issuance of the certificate of authority.

(c) When applying for a certificate of authority, an interlocal risk management agency shall file with the Commissioner an application setting forth:

(1) The name of the agency;

(2) The location of the agency's principal office;

(3) The names and addresses of the members of the agency;

(4) The names and addresses of the members of each fund;

(5) The name and address of a Georgia resident designated and appointed as each fund's proposed registered agent for service of process in this state;

(6) The names and addresses of the members of the board of trustees of the agency;

(7) A copy of the bylaws of the agency;

(8) A copy of the intergovernmental contract establishing the agency;

(9) A copy of the agreement or agreements establishing each fund;

(10) A copy of any agreements between the agency, any fund of the agency, and any administrator of a fund;

(11) A statement of the financial condition of the agency and each fund of the agency listing all of their assets and liabilities as of the end of the last preceding month prior to the date of the application on such a form as may be prescribed by the Commissioner;

(12) A copy of each contract, endorsement, and application form proposed to be issued or used in connection with each fund. Such

contracts, endorsements, applications, or revisions thereto shall be filed with and approved by the Commissioner prior to their use; and

(13) A copy of the rates, rating systems, and rules proposed to be used in connection with each fund. Such rates, rating systems, rules, and any revisions thereto shall be filed with and approved by the Commissioner prior to their use.

(d) A fund authorized by this chapter may be established by an agency only if the agency has enrolled members which:

(1) For each motor vehicle liability and general liability fund shall generate an annual gross premium of not less than $300,000.00;

(2) For each property damage fund shall generate an annual gross premium of not less than $200,000.00;

(3) For each fund which includes motor vehicle liability or general liability with property damage shall generate an annual gross premium of not less than $500,000.00;

(4) For each fund which includes motor vehicle liability, general liability, and property damage shall generate an annual gross premium of not less than $800,000.00; or

(5) For each fund which includes accident, disability, or supplemental medical coverage shall generate an annual gross premium of not less than $500,000.00. (Code 1981, § 36-85-5, enacted by Ga. L. 1986, p. 1496, § 1; Ga. L. 1987, p. 1454, § 3; Ga. L. 2017, p. 336, § 4/HB 146.)

The 2017 amendment, effective January 1, 2018, deleted "or" at the end of paragraph (d)(3), substituted "; or" for the period at the end of paragraph (d)(4), and added paragraph (d)(5).

CHAPTER 87

PARTICIPATION IN FEDERAL PROGRAMS

Sec.
36-87-2. Authority of counties and municipal corporations to participate in programs; powers.

36-87-2. Authority of counties and municipal corporations to participate in programs; powers.

(a) Each county and municipal corporation of the State of Georgia is authorized to participate in federal programs which provide federal

grants and federal loans for such purposes including but not limited to housing, transportation, and water and waste-water treatment and distribution purposes. Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to exercise the following powers:

(1) To expend revenues, but shall not impose any new form of taxation; and

(2) To contract:

(A) With the United States and its departments and agencies;

(B) With the State of Georgia and its departments, agencies, and authorities;

(C) With regional commissions, political subdivisions of the state, and public authorities of such subdivisions; and

(D) With private nonprofit entities organized for the purpose of providing services to persons of low and moderate income when such entities are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986

when the exercise of such powers is necessary to comply with the conditions established by federal law and federal regulations for eligibility for participation in such federal programs.

(b)(1) Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to expend public funds and participate in community development block grant programs and other federal programs to construct facilities to carry out the following purposes:

(A) Providing day-care services primarily to the children of persons of low and moderate income;

(B) Providing services to elderly persons;

(C) Providing health education, literacy and English language instruction, mental health and disability services, legal assistance, emergency food, and medical assistance to low and moderate income persons; and

(D) Any combination of services authorized in this paragraph.

(2) Counties and municipalities are further authorized to carry out the purposes of this subsection by contracting with public agencies and nonprofit entities described in paragraph (2) of subsection (a) of this Code section.

(3) Any contracts, programs, projects, or expenditures of public funds authorized by this subsection which were entered into, carried

out, undertaken, or made prior to April 5, 1994, are validated and confirmed.

(c) State agencies rating applications from counties and municipal corporations for federal funding of the construction of child care learning centers shall, to the extent allowed under applicable federal laws or regulations, give priority to those child care learning centers located in or adjacent to industrial parks.

(d) Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to:

(1) Participate in federal and state programs which provide funds for job training, job research assistance, and workforce development programs;

(2) Accept and expend grant funds subject to such terms as may be required by the grantor, including the duty to reimburse the grantor for any funds not expended in accordance with such terms;

(3) Contract with public agencies and nonprofit entities described in paragraph (2) of subsection (a) of this Code section for the purpose of carrying out such programs; and

(4) Ratify any contracts, programs, projects, or expenditures of public funds authorized by this subsection which were entered into, carried out, undertaken, or made prior to July 1, 1997. (Code 1981, § 36-87-2, enacted by Ga. L. 1993, p. 792, § 1; Ga. L. 1994, p. 822, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1997, p. 696, § 1; Ga. L. 2005, p. 1484, § 1/HB 186; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2008, p. 181, § 21/HB 1216; Ga. L. 2013, p. 135, § 9/HB 354.)

The 2013 amendment, effective July 1, 2013, in subsection (c), substituted "child care learning centers" for "day-care facilities" near the middle, and substituted "child care learning centers" for "day-care centers" near the end.

CHAPTER 88

ENTERPRISE ZONES

Sec.		Sec.	
36-88-3.	Definitions.	36-88-6.	Criteria for enterprise zone.
36-88-4.	Available incentives; qualifying business; exemptions.	36-88-8.	Tax exemption.
		36-88-10.	Time limitations.

36-88-3. Definitions.

As used in this chapter, the term:

(1) "Ad valorem tax" means property taxes levied for state, county, or municipal operating purposes but does not include property taxes imposed by school districts or property taxes imposed for general obligation debt.

(2) "Business enterprise" means any business engaged primarily in retail, manufacturing, warehousing and distribution, processing, telecommunications, tourism, research and development industries, new residential construction, and residential rehabilitation.

(3) "Department" means the Department of Community Affairs.

(4) "Enterprise zone" means the geographic area designated pursuant to Code Section 36-88-5.

(5) "Full-time job equivalent" means a job or jobs with no predetermined end date, with a regular work week of 30 hours or more, and with the same benefits provided to similar employees.

(6) "Low-income and moderate-income individual" means a person currently:

(A) Unemployed or unemployed for three of the six months prior to the date of hire;

(B) Homeless;

(C) A resident of public housing;

(D) Receiving temporary assistance for needy families or who has received temporary assistance for needy families at any time during the 18 months previous to the date of hire;

(E) A participant in the Workforce Investment Act or who has participated in the Workforce Investment Act at any time during the 18 months previous to the date of hire;

(F) A participant in a job opportunity where basic skills are required or who has participated in such a job opportunity at any time during the 18 months previous to the date of hire;

(G) Receiving supplemental social security income; or

(H) Receiving food stamps.

(7) "New job" means employment for an individual created within an enterprise zone by a new or expanded qualified business or service enterprise at the time of the initial staffing of such new or expanded enterprise.

(8) "Qualified or qualifying business" means an employer that meets the requirements of Code Section 36-88-4 and other applicable requirements of this chapter.

(8.1) "Sales and use tax" means sales and use taxes applicable to sales transactions within the boundaries of an area designated as an enterprise zone pursuant to subsection (g) of Code Section 36-88-6, not to include:

(A) A sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

(B) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment; or

(C) Any tax levied for purposes of water and sewer projects pursuant to Article 4 or 5A of Chapter 8 of Title 48.

(9) "Service enterprise" means an entity engaged primarily in finance, insurance, and real estate activity or activities listed under the Standard Industrial Classification (SIC) Codes 60 through 67 according to the Federal Office of Management and Budget Standard Industrial Classification Manual, 1987 edition, or engaged primarily in day-care activities.

(10) "Urban redevelopment plan" means a plan prepared and adopted pursuant to the requirements of Chapter 61 of this title. (Code 1981, § 36-88-3, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 1998, p. 128, § 36; Ga. L. 1999, p. 333, § 1; Ga. L. 2003, p. 818, § 1; Ga. L. 2004, p. 939, §§ 2, 3; Ga. L. 2017, p. 52, § 1/HB 342.)

The 2017 amendment, effective July 1, 2017, added paragraph (8.1).

36-88-4. Available incentives; qualifying business; exemptions.

(a) The following incentives are available to qualifying business and service enterprises to encourage revitalization within enterprise zones:

(1) The enterprise zone property tax exemption provided in Code Section 36-88-8;

(2) The occupational tax, regulatory fee, and business inspection fee abatement or reduction provided in Code Section 36-88-9; and

(3) For enterprise zones created pursuant to subsection (g) of Code Section 36-88-6, the sales and use tax exemption provided in such subsection pursuant to the authority granted by Article IX, Section II, Paragraph VII(c) of the Constitution of Georgia.

(b) A qualifying business or service enterprise is an enterprise which increased employment by five or more new full-time job equivalents in an area designated as an enterprise zone and which provides additional economic stimulus in such zone. The quality and quantity of such additional economic stimulus shall be determined, on a case-by-case basis, by the local governing body or bodies that have designated the enterprise zone. Such business or service enterprise may be new, an expansion or reinvestment of an existing business or service enterprise, or a successor to such business or service enterprise. Whenever possible, 10 percent of such new employees shall be low-income or moderate-income individuals.

(c) Notwithstanding any provision of this Code section to the contrary, a local governing body or bodies creating an enterprise zone prior to January 1, 2000, may provide the exemptions and abatements as provided in this chapter to any qualifying business or service enterprise which employs at least 5,000 persons and which creates ten or more new full-time job equivalents that did not exist prior to July 1, 1997, provided such qualifying business or service enterprise provides economic stimulus to such zone and the quality and quantity of such stimulus is acceptable to the local governing body or bodies creating the enterprise zone. (Code 1981, § 36-88-4, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 2017, p. 52, § 2/HB 342.)

The 2017 amendment, effective July 1, 2017, deleted "and" from the end of paragraph (a)(1); substituted "; and" for a period at the end of paragraph (a)(2); and added paragraph (a)(3).

36-88-6. Criteria for enterprise zone.

(a) In order to be designated as an enterprise zone, a nominated area shall meet at least three of the five criteria specified in subsections (b), (c), (d), (e), and (f), or the criteria specified in subsection (g) of this Code section. In determining whether an area suffers from poverty, unemployment, or general distress, the governing body shall use data from the most current United States decennial census and from other information published by the United States Bureau of the Census, the Federal Bureau of Labor Statistics, and the Georgia Department of Labor. In determining whether an area suffers from underdevelopment, the governing body shall use the data specified in subsection (e) of this Code section. The data shall be comparable in point or period of time and methodology employed.

(b) Pervasive poverty shall be evidenced by showing that poverty is widespread throughout the nominated area and shall be established by using the following criteria:

(1) The poverty rate shall be determined from the data in the most current United States decennial census prepared by the United States Bureau of the Census;

(2) For parcels within the nominated area, the parcels must be within or adjacent to a census block group where the ratio of income to poverty level for at least 15 percent of the residents shall be less than 1.0;

(3) Census geographic block groups with no population shall be treated as having a poverty rate which meets the standards of paragraph (2) of this subsection; and

(4) All parcels of a nominated area must abut and may not contain a noncontiguous parcel, unless such nonabutting parcel qualifies separately under the criteria set forth under paragraph (2) of this subsection.

(c) Unemployment shall be evidenced by the use of data published by the Office of Labor Information Systems of the Georgia Department of Labor indicating that the average rate of unemployment for the nominated area for the preceding calendar year is at least 10 percent higher than the state average rate of unemployment or by evidence of adverse economic conditions brought about by significant job dislocation within the nominated area such as the closing of a manufacturing plant or federal facility.

(d) General distress shall be evidenced by adverse conditions within the nominated area other than those of pervasive poverty and unemployment. Examples of such adverse conditions include, but are not limited to, a high incidence of crime, abandoned or dilapidated structures, deteriorated infrastructure, and substantial population decline.

(e) Underdevelopment shall be evidenced by data indicating development activities, or lack thereof, through land disturbance permits, business license fees, building permits, development fees, or other similar data indicating that the level of development in the nominated area is lower than development activity within the local governing body's jurisdiction.

(f) General blight within the nominated area shall be evidenced by the inclusion of any portion of the nominated area in an urban redevelopment area as defined by paragraph (20) of Code Section 36-61-2 for which an urban redevelopment plan has been adopted by the affected governing bodies according to the requirements of Chapter 61 of this title.

(g)(1) A nominated area under this subsection shall:

(A) Be included in an urban redevelopment area as defined by paragraph (23) of Code Section 36-61-2; and

(B) Contain within its borders the site for a redevelopment project having a minimum of $400 million in capital investment for the redevelopment of an area certified by the commissioner to have been chronically underdeveloped for a period of 20 years or more.

(2) Any nominated area meeting the criteria in paragraph (1) of this subsection may be designated as an enterprise zone. Any redevelopment project used to qualify an area for designation as an enterprise zone under this subsection shall, upon approval of such designation, qualify for an exemption of any sales and use tax levied within the boundaries of such project.

(3) Any variation in the sales price of goods and services within any redevelopment project used to qualify an area for designation as an enterprise zone under this subsection attributable to lease arrangements between a retailer and the owner of the project shall be a permitted practice under Parts 1 and 2 of Article 15 of Chapter 1 of Title 10.

(4) By resolution or ordinance, the local governing body designating and creating an enterprise zone under this subsection may assess and collect annual enterprise zone infrastructure fees from each retailer operating within the boundaries of the project in an amount not to exceed, in aggregate, the amount of sales and use tax on transactions of such retailer exempted under paragraph (2) of this subsection, which fees may be pledged by such local governing body, directly or indirectly, as security for revenue bonds issued for development or infrastructure within the enterprise zone.

(5) This subsection shall not apply to projects involving or related to casino gambling. (Code 1981, § 36-88-6, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 1999, p. 81, § 36; Ga. L. 2004, p. 939, § 4; Ga. L. 2009, p. 132, § 1/HB 427; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2017, p. 52, § 3/HB 342.)

The 2017 amendment, effective July 1, 2017, inserted ", or the criteria specified in subsection (g)" near the end of the first sentence of subsection (a); and added subsection (g).

36-88-8. Tax exemption.

(a)(1) The governing body of a local government or governments creating an enterprise zone other than an enterprise zone under subsection (g) of Code Section 36-88-6, shall include in the creating ordinance a provision to exempt qualifying business and service enterprises from state, county, and municipal ad valorem taxes that would otherwise be levied on the qualifying business and service enterprises not to exceed the following schedule:

(A) One hundred percent of the property taxes shall be exempt for the first five years;

(B) Eighty percent of the property taxes shall be exempt for the next two years;

(C) Sixty percent of the property taxes shall be exempt for the next year;

(D) Forty percent of the property taxes shall be exempt for the next year; and

(E) Twenty percent of the property taxes shall be exempt for the tenth year.

(2) For any qualifying business or service enterprise, the schedule provided for in paragraph (1) of this subsection may begin in any year during which an area has an enterprise zone designation. Such tax exemption may continue even if the area's enterprise zone designation has terminated. A minimum of five new jobs must be maintained for a qualifying business or service enterprise to maintain eligibility for the tax exemption provided pursuant to this Code section.

(b) If the project consists of new residential construction, residential rehabilitation, or other rehabilitation of an existing structure and the value of the improvement exceeds the value of the land by a ratio of five to one, then the exemption schedule in subsection (a) of this Code section shall also apply whether or not the project is carried out by a qualifying business or service enterprise.

(c) In no event shall the value of the property tax exemptions granted to qualifying business and service enterprises within an enterprise zone created by a city, a county, or both, exceed 10 percent of the value of the property tax digest of the creating jurisdiction or jurisdictions. (Code 1981, § 36-88-8, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 1999, p. 333, § 2; Ga. L. 2004, p. 939, § 5; Ga. L. 2017, p. 52, § 4/HB 342.)

The 2017 amendment, effective July 1, 2017, inserted "other than an enterprise zone under subsection (g) of Code Section 36-88-6," near the middle of paragraph (a)(1); and substituted "tenth year" for "last year" near the end of subparagraph (a)(1)(E).

36-88-10. Time limitations.

An area designated as an enterprise zone shall remain in existence for ten years from the first day of the calendar year immediately following its designation as an enterprise zone; provided, however, that an area designated as an enterprise zone under subsection (g) of Code Section 36-88-6 shall remain in existence for 30 years from such day or until the redevelopment project required in subparagraph (g)(1)(B) of Code Section 36-88-6 is complete and any revenue bonds issued under

paragraph (4) of subsection (g) of Code Section 36-88-6 are retired, whichever first occurs. Municipal and county governments may enter into agreements with qualifying business or service enterprises in designated enterprise zones to provide for modification or termination of the tax and fee exemptions and abatements. Property tax incentives available to a qualified business or service enterprise in an enterprise zone shall remain in effect for the full ten-year period established by Code Section 36-88-8, regardless of the termination of the designation of the enterprise zone. (Code 1981, § 36-88-10, enacted by Ga. L. 1997, p. 1481, § 1; Ga. L. 2017, p. 52, § 5/HB 342.)

The 2017 amendment, effective July 1, 2017, added the proviso at the end of the first sentence.

CHAPTER 91

PUBLIC WORKS BIDDING

Article 2

Contracting and Bidding Requirements

Sec.

36-91-20. Written contract required; advertising; competitive sealed bidding; timing of addendums; prequalification.
36-91-21. Competitive award requirements.
36-91-23. Prohibition of disqualification of otherwise qualified bidder from bid or proposal or prequalification based upon lack of previous experience; conditions.
36-91-24. Liquidated damages and other incentive provisions for project completion.

Article 3

Bonds

PART 1

GENERAL PROVISIONS

36-91-41. No bid bond required under certain circumstances.

PART 4

PAYMENT BONDS

Sec.

36-91-92. Notice of commencement.

Article 5

Partnership for Public Facilities and Infrastructure

36-91-110. Definitions.
36-91-111. Creation of Partnership for Public Facilities and Infrastructure Act Guidelines Committee; membership; terms; allowances; duties; support.
36-91-112. Model guidelines.
36-91-113. Unsolicited proposals.
36-91-114. Approval process.
36-91-115. Comprehensive agreement.
36-91-116. Default and remedies.
36-91-117. Powers.
36-91-118. Sovereign or official immunity.
36-91-119. Article inapplicable to local government procurement via competitive sealed bidding; article inapplicable to certain transportation projects; public meeting requirements.

ARTICLE 1

GENERAL PROVISIONS

36-91-2. Definitions.

JUDICIAL DECISIONS

Public works construction. — Board of Regents of the University System of Georgia was immune from a suit by employees of a contractor who provided a forged payment bond to the Board; the maintenance contract was not for "public works construction" as defined in O.C.G.A. § 36-91-2(12); therefore, the provisions for payment bonds in O.C.G.A. § 13-10-60 et seq. did not apply. Further, the Board had no duty to investigate the information presented on the face of the payment bond. Bd. of Regents of the Univ. Sys. of Ga. v. Brooks, 324 Ga. App. 15, 749 S.E.2d 23 (2013).

Emergency sufficiently identified. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in its minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101 (2015), cert. denied, No. S15C1141, 2015 Ga. LEXIS 471 (Ga. 2015).

ARTICLE 2

CONTRACTING AND BIDDING REQUIREMENTS

36-91-20. Written contract required; advertising; competitive sealed bidding; timing of addendums; prequalification.

(a) All public works construction contracts subject to this chapter entered into by a governmental entity with private persons or entities shall be in writing and on file and available for public inspection at a place designated by such governmental entity. Municipalities and consolidated governments shall execute and enter into contracts in the manner provided in applicable local legislation or by ordinance.

(b)(1) Prior to entering into a public works construction contract other than those exempted by Code Section 36-91-22, a governmental entity shall publicly advertise the contract opportunity. Such notice shall be posted conspicuously in the governing authority's office and shall be advertised in the legal organ of the county or by electronic means on an Internet website of the governmental entity or any appropriate Internet websites identified by the governmental entity which shall include the Georgia Procurement Registry as provided by Code Section 50-5-69, provided that such posting is at no cost to the governmental entity.

(2) Contract opportunities that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertise-

ment occurring at least four weeks prior to the opening of the sealed bids or proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement.

(3) Contract opportunities that are advertised solely on the Internet shall be posted continuously for at least four weeks prior to the opening of sealed bids or proposals. Inadvertent or unintentional loss of Internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.

(4) Contract opportunities that will be awarded by competitive sealed bids shall have plans and specifications available on the first day of the advertisement and shall be open to inspection by the public. The plans and specifications shall indicate if the project will be awarded by base bid or base bid plus selected alternates and:

(A) A statement listing whether all anticipated federal, state, or local permits required for the project have been obtained or an indication of the status of the application for each such permit including when it is expected to be obtained; and

(B) A statement listing whether all anticipated rights of way and easements required for the project have been obtained or an indication of the status as to when each such rights of way or easements are expected to be obtained.

(5) Contract opportunities that will be awarded by competitive sealed proposals shall be publicly advertised with a request for proposals which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project.

(6) The advertisement shall include such details and specifications as will enable the public to know the extent and character of the work to be done.

(7) All required notices of advertisement shall also advise of any mandatory prequalification requirements or pre-bid conferences as well as any federal requirements pursuant to subsection (d) of Code Section 36-91-22. Any advertisement which provides notice of a mandatory pre-bid conference or prequalification shall provide reasonable advance notice of said conference or for the submittal of such prequalification information.

(c) Governmental entities are authorized to utilize any construction delivery method, provided that all public works construction contracts subject to the requirements of this chapter that:

(1) Place the bidder or offeror at risk for construction; and

(2) Require labor or building materials in the execution of the contract

shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals. Governmental entities shall have the authority to reject all bids or proposals or any bid or proposal that is nonresponsive or not responsible and to waive technicalities and informalities.

(d) No governmental entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72 hour period prior to the advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to readvertise as required by subsection (b) of this Code section.

(e) Bid and contract documents may contain provisions authorizing the issuance of change orders, without the necessity of additional requests for bids or proposals, within the scope of the project when appropriate or necessary in the performance of the contract. Change orders may not be used to evade the purposes of this article.

(f) Any governmental entity may, in its discretion, adopt a process for mandatory prequalification of prospective bidders or offerors; provided, however, that:

(1) Criteria for prequalification must be reasonably related to the project or the quality of work;

(2) Criteria for prequalification must be available to any prospective bidder or offeror requesting such information for each project that requires prequalification;

(3) Any prequalification process must include a method of notifying prospective bidders or offerors of the criteria for or limitations to prequalification; and

(4) Any prequalification process must include a procedure for a disqualified bidder to respond to his or her disqualification to a representative of the governmental entity; provided, however, that such procedure shall not be construed to require the governmental entity to provide a formal appeals procedure. A prequalified bidder or offeror can not be later disqualified without cause. (Code 1981, § 36-91-20, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 640, § 2/SB 146; Ga. L. 2018, p. 926, § 2/HB 489.)

The 2018 amendment, effective July 1, 2018, in paragraph (b)(1), in the second sentence, substituted "or any appropriate Internet websites identified by the governmental entity which shall" for "or an Internet website identified by the governmental entity which may" in the middle, and added ", provided that such posting is at no cost to the governmental entity" at the end.

36-91-21. Competitive award requirements.

(a) It shall be unlawful to let out any public works construction contracts subject to the requirements of this chapter without complying with the competitive award requirements contained in this Code section. Any contractor who performs any work of the kind in any other manner and who knows that the public works construction contract was let out without complying with the notice and competitive award requirements of this chapter shall not be entitled to receive any payment for such work.

(b) Any competitive sealed bidding process shall comply with the following requirements:

(1) The governmental entity shall publicly advertise an invitation for bids;

(2) Bidders shall submit sealed bids based on the criteria set forth in such invitation;

(3) The governmental entity shall open the bids publicly and evaluate such bids without discussions with the bidders; and

(4) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids; provided, however, that if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the public works construction contract, the governmental entity may negotiate with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(c)(1) In making any competitive sealed proposal, a governmental entity shall:

(A) Publicly advertise a request for proposals, which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project, as well as the relative importance of the evaluation factors;

(B) Open all proposals received at the time and place designated in the request for proposals so as to avoid disclosure of contents to competing offerors during the process of negotiations; and

(C) Make an award to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the governmental entity, taking into consideration the evaluation factors set forth in the request for proposals. The evaluation factors shall be the basis on which the award decision is made. The contract file shall indicate the basis on which the award is made.

(2) As set forth in the request for proposals, offerors submitting proposals may be afforded an opportunity for discussion, negotiation, and revision of proposals. Discussions, negotiations, and revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers. In accordance with the request for proposals, all responsible offerors found by the governmental entity to have submitted proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations, and revisions. During the process of discussion, negotiation, and revision, the governmental entity shall not disclose the contents of proposals to competing offerors.

(d) Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

(e) Before commencing the work, any person who procures such public work by bidding or proposal shall make an oath in writing that he or she has not directly or indirectly violated subsection (d) of this Code section. The oath shall be filed by the officer whose duty it is to make the payment. If the contractor is a partnership, all of the partners and any officer, agent, or other person who may have represented or acted for them in bidding for or procuring the contract shall also make the oath. If the contractor is a corporation, all officers, agents, or other persons who may have acted for or represented the corporation in bidding for or procuring the contract shall make the oath. If such oath is false, the contract shall be void, and all sums paid by the governmental entity on the contract may be recovered by appropriate action.

(f)(1) Unless otherwise required by law, no governmental entity that contracts for public works construction shall in its bid documents, specifications, project agreements, or other controlling documents for a public works construction contract:

(A) Require or prohibit bidders, offerors, contractors, subcontractors, or material suppliers to enter into or adhere to prehire agreements, project labor agreements, collective bargaining agreements, or any other agreement with one or more labor organizations on the same or other related construction projects; or

(B) Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors, or material suppliers for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations on the same or other related construction projects.

(2) Nothing in this subsection shall prohibit bidders, offerors, contractors, subcontractors, or material suppliers from voluntarily entering into agreements described in paragraph (1) of this subsection.

(3) The head of a governmental entity may exempt a particular public works construction contract from the requirements of any or all of the provisions of paragraph (1) of this subsection if the governmental entity finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstance under this paragraph shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations or concerning employees on the particular project who are not members of or affiliated with a labor organization.

(g) If any member of a governmental entity lets out any public works construction contract subject to the requirements of this article and receives, takes, or contracts to receive or take, either directly or indirectly, any part of the pay or profit arising out of any such contract, he or she shall be guilty of a misdemeanor.

(h) No public works construction contract with a governing authority shall be valid for any purpose unless the contractor shall comply with all bonding requirements of this chapter. No such contract shall be valid if any governmental entity lets out any public works construction contract subject to the requirements of this chapter without complying with the requirements of this chapter. (Code 1981, § 36-91-21, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2013, p. 628, § 5/SB 179.)

The 2013 amendment, effective May 6, 2013, added subsection (f) and redesignated former subsections (f) and (g) as present subsections (g) and (h), respectively.

36-91-22. Exceptions; use of inmate labor; emergency situations.

Law reviews. — For annual survey of construction law, see 67 Mercer L. Rev. 23 (2015).

JUDICIAL DECISIONS

Payment bond not required. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in the city's minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101 (2015), cert. denied, No. S15C1141, 2015 Ga. LEXIS 471 (Ga. 2015).

36-91-23. Prohibition of disqualification of otherwise qualified bidder from bid or proposal or prequalification based upon lack of previous experience; conditions.

In awarding contracts based upon sealed competitive bids or sealed competitive proposals, no responsible bidder shall be disqualified from a bid or proposal or denied prequalification based upon:

(1) A lack of previous experience with a job of the size for which the bid or proposal is being sought if:

(A) The bid or proposal is not more than 30 percent greater in scope or cost from the responsible bidder's previous experience in jobs;

(B) The responsible bidder has experience in performing the work for which bids or proposals are sought; and

(C) The responsible bidder is capable of being bonded by a surety which meets the qualifications of the bid documents for a bid bond, a performance bond, and a payment bond as required for the scope of the work for which the bid or proposal is being sought; or

(2) A lack of previous experience with the construction delivery method to be used for the job for which the bid or proposal is being sought. (Code 1981, § 36-91-23, enacted by Ga. L. 2013, p. 126, § 2/SB 168; Ga. L. 2018, p. 343, § 2/HB 899.)

Effective date. — This Code section became effective April 24, 2013.

The 2018 amendment, effective May 3, 2018, in the introductory paragraph, substituted "based upon: (1) A lack" for "based upon a lack" in the middle; redesignated former paragraphs (1) through (3) as present subparagraphs (1)(A) through (1)(C), respectively; added "; or" at the end of subparagraph (1)(C); and added paragraph (2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Code Section 36-91-23, as enacted by Ga. L.

2013, p. 628, § 6/SB 179, was redesignated as Code Section 36-91-24.

36-91-24. Liquidated damages and other incentive provisions for project completion.

Public works construction contracts may include both liquidated damages provisions for late construction project completion and incentive provisions for early construction project completion when the project schedule is deemed to have value. The terms of the liquidated damages provisions and the incentive provisions shall be established in advance as a part of the construction contract and included within the terms of the bid or proposal. (Code 1981, § 36-91-24, enacted by Ga. L. 2013, p. 628, § 6/SB 179.)

Effective date. — This Code section became effective May 6, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Code Section 36-91-23, as enacted by Ga. L. 2013, p. 628, § 6/SB 179, was redesignated as Code Section 36-91-24.

ARTICLE 3

BONDS

PART 1

GENERAL PROVISIONS

36-91-40. Approval and filing of bonds with treasurer.

JUDICIAL DECISIONS

Approval of payment bonds. — When the general contractor failed to pay the subcontractor for the subcontractor's work on a city project and the surety was insolvent, and the subcontractor sued the general contractor and the city for its work, the trial court properly granted summary judgment in favor of the city because the city complied with the payment bond requirements, and the subcontractor was limited to the exclusive remedy set forth in Georgia's payment bond statutes, O.C.G.A. §§ 36-91-90 and 36-91-91. J. Squared Plumbing Company, Inc. v. City of Atlanta, 337 Ga. App. 229, 786 S.E.2d 894 (2016).

36-91-41. No bid bond required under certain circumstances.

When a governmental entity invites competitive sealed proposals for a public works construction project and the request for proposals for such project states that price or project cost will not be a selection or evaluation factor, no bid bond shall be required unless the governmental entity provides for a bid bond in the request for proposals and specifies the amount of such bond. (Code 1981, § 36-91-41, enacted by Ga. L. 2013, p. 628, § 7/SB 179.)

Effective date. — This Code section became effective May 6, 2013.

Editor's notes. — Former Code Section 36-91-41 was redesignated as Code Section 36-91-50 by Ga. L. 2001, p. 820, § 12, effective July 1, 2001.

Part 4

Payment Bonds

36-91-90. Requirement for payment bonds.

Law reviews. — For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

JUDICIAL DECISIONS

Compliance with payment bond requirements. — When the general contractor failed to pay the subcontractor for the subcontractor's work on a city project and the surety was insolvent, and the subcontractor sued the general contractor and the city for its work, the trial court properly granted summary judgment in favor of the city because the city complied with the payment bond requirements, and the subcontractor was limited to the exclusive remedy set forth in Georgia's payment bond statutes, O.C.G.A. §§ 36-91-90 and 36-91-91. J. Squared Plumbing Company, Inc. v. City of Atlanta, 337 Ga. App. 229, 786 S.E.2d 894 (2016).

Emergency exception. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in the city's minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101 (2015), cert. denied, No. S15C1141, 2015 Ga. LEXIS 471 (Ga. 2015).

Cited in Complete Wiring Solutions, LLC v. Astra Group, Inc., 335 Ga. App. 723, 781 S.E.2d 597 (2016).

36-91-91. Liability of contracting party to subcontractors for noncompliance.

Law reviews. — For annual survey of construction law, see 67 Mercer L. Rev. 23 (2015). For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

JUDICIAL DECISIONS

Compliance with payment bond requirements. — When the general contractor failed to pay the subcontractor for the subcontractor's work on a city project and the surety was insolvent, and the subcontractor sued the general contractor and the city for its work, the trial court properly granted summary judgment in favor of the city because the city complied with the payment bond requirements, and the subcontractor was limited to the exclusive remedy set forth in Georgia's payment bond statutes, O.C.G.A. §§ 36-91-90 and 36-91-91. J. Squared Plumbing Company, Inc. v. City of Atlanta, 337 Ga. App. 229, 786 S.E.2d 894 (2016).

36-91-92. Notice of commencement.

(a) The contractor furnishing the payment bond or security deposit shall post on the public works construction site and file with the clerk of the superior court in the county in which the site is located a notice of commencement no later than 15 days after the contractor physically commences work on the project and supply a copy of the notice of commencement to any subcontractor, materialman, or person who makes a written request of the contractor. Failure to supply a copy of the notice of commencement within ten calendar days of receipt of the written request from the subcontractor, materialman, or person shall render the provisions of paragraph (1) of subsection (a) of Code Section 36-91-93 inapplicable to the subcontractor, materialman, or person making the request. The notice of commencement shall include:

(1) The name, address, and telephone number of the contractor;

(2) The name and location of the public work being constructed or a general description of the improvement;

(3) The name and address of the governmental entity that is contracting for the public works construction;

(4) The name and address of the surety for the performance and payment bonds, if any; and

(5) The name and address of the holder of the security deposit provided, if any.

(b) The failure to file a notice of commencement shall render the notice to contractor requirements of paragraph (2) of subsection (a) of Code Section 36-91-93 inapplicable.

(c) The clerk of the superior court shall file the notice of commencement within the records of that office and maintain an index separate from other real estate records or an index with the preliminary notices specified in subsection (a) of Code Section 44-14-361.3. Each such notice of commencement shall be indexed under the name of the governmental entity and the name of the contractor as contained in the notice of commencement. (Code 1981, § 36-91-72, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-92, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2013, p. 628, § 8/SB 179.)

The 2013 amendment, effective May 6, 2013, substituted "paragraph (2)" for "paragraph (1)" in the middle of subsection (b).

36-91-95. Time limitation.

JUDICIAL DECISIONS

Cited in Complete Wiring Solutions, LLC v. Astra Group, Inc., 335 Ga. App. 723, 781 S.E.2d 597 (2016).

ARTICLE 5

PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE

Editor's notes. — This article became effective May 5, 2015.

Ga. L. 2015, p. 406, § 1/SB 59, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Partnership for Public Facilities and Infrastructure Act.'"

36-91-110. Definitions.

As used in this article, the term:

(1) "Comprehensive agreement" means the written agreement between the private entity and the local government required by Code Section 36-91-115.

(2) "Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, or expand.

(3) "Local authority" means any local authority created pursuant to a local or general Act of the General Assembly, including a joint public instrumentality.

(4) "Local government" means any county, municipality, consolidated government, or board of education.

(5) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

(6) "Qualifying project" means any project selected in response to a request from a local government or submitted by a private entity as an unsolicited proposal in accordance with this article and subsequently reviewed and approved by a local government, within its sole discretion, as meeting a public purpose or public need. This term shall not include and shall have no application to any project involving:

(A) The generation of electric energy for sale pursuant to Chapter 3 of Title 46;

(B) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46;

(C) Cable and video services pursuant to Chapter 76 of this title; or

(D) Water reservoir projects as defined in paragraph (10) of Code Section 12-5-471, which shall be governed by Article 4 of this chapter.

(7) "Revenue" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project.

(8) "Unsolicited proposal" means a written proposal for a qualifying project that is received by a local government and is not in response to any request for proposal for a qualifying project issued by a local government. (Code 1981, § 36-91-110, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

Law reviews. — For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015).

36-91-111. Creation of Partnership for Public Facilities and Infrastructure Act Guidelines Committee; membership; terms; allowances; duties; support.

(a) The Partnership for Public Facilities and Infrastructure Act Guidelines Committee is established to prepare model guidelines for local governments in the implementation of this article.

(b) The committee shall be composed of ten persons. Except for the local government officials or staff appointed to the committee, each committee member shall have subject matter expertise in architecture, construction management, engineering, finance, or real estate development. These appointments shall be made as follows:

(1) The following members shall be appointed by the Governor:

(A) One member or employee of a county governing authority;

(B) One member or employee of a municipal governing authority;

(C) One member or employee of a local board of education; and

(D) One licensed member of the State Bar of Georgia with expertise in representing local government in public works construction.

(2) The following members shall be appointed by the Speaker of the House of Representatives, provided that one of these appointees shall have expertise in working with local government:

(A) One member of the business community with expertise in construction management employed by a firm with less than $25 million in annual revenue;

(B) One member of the business community who is a licensed architect; and

(C) One member of the business community with expertise in real estate development; and

(3) The following members shall be appointed by the Lieutenant Governor, provided that one of these appointees shall have expertise in working with local government:

(A) One member of the business community with expertise in construction management employed by a firm with more than $25 million in annual revenue;

(B) One member of the business community who is a licensed professional engineer; and

(C) One member of the business community with expertise in finance.

(c) The terms of these committee appointments shall be for two years. At least three of these appointees shall reside outside of the metropolitan Atlanta area. The appointments shall be made as soon as feasible, but not later than August 1, 2015. The committee shall meet once a month or as needed and shall issue model guidelines to local governments no later than July 1, 2016. Such guidelines shall be updated every two years. The members of the committee shall elect a chairperson and a vice chairperson who shall serve for two-year terms in such office.

(d) Citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees.

(e) Staff support shall be provided by the Department of Administrative Services, the Governor's office, and the Office of Planning and Budget. (Code 1981, § 36-91-111, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-112. Model guidelines.

(a) Prior to executing any comprehensive agreement for the development or operation of a qualifying project pursuant to an unsolicited

proposal received by a local government under this article, the local government shall adopt either:

(1) The model guidelines from the Partnership for Public Facilities and Infrastructure Act Guidelines Committee; or

(2) Its own guidelines as a policy, rule, regulation, or ordinance, which shall contain each of the factors identified in subsection (b) of this Code section.

(b) The model guidelines shall include, at a minimum, the following:

(1) The period of time each calendar year when the local government will consider receiving, processing, reviewing, or evaluating unsolicited proposals for qualifying projects, and such limited time period shall be established within the sole discretion of the local government;

(2) Procedures for the financial review and analysis of an unsolicited proposal that may include:

(A) A cost-benefit analysis;

(B) Evaluation of the public need for or benefit derived from the qualifying project;

(C) Evaluation of the estimated cost of the qualifying project for reasonableness in relation to similar facilities;

(D) Evaluation of the source of funding for the project;

(E) Consideration of plans to ensure timely development or operation;

(F) Evaluation of risk sharing, including cost or completion guarantees, added value, or debt or equity investments by the private entity; and

(G) Consideration of any increase in funding, dedicated revenue source, or other economic benefit that would not otherwise be available;

(3) Criteria for determining any fees authorized in Code Section 36-91-113 that the local government elects to charge the private entity for the processing, review, and evaluation of an unsolicited proposal;

(4) A requirement for the issuance of a request for proposals upon a decision by the local government to proceed with a qualifying project pursuant to an unsolicited proposal;

(5) Procedures for posting and publishing notice of the opportunity to offer competing proposals;

(6) Procedures for the processing, review, and consideration of competing proposals, and the period for the processing, review, and consideration of competing proposals shall not be less than 90 days;

(7) Procedures for determining whether information included in an unsolicited proposal shall be released as part of any request for proposals to ensure fair competition; and

(8) Procedures for identifying and appointing an independent owner adviser to the local government with expertise in architecture, engineering, or construction management to assist in the evaluation of an unsolicited proposal and to serve as owner adviser to the local government if the local government chooses to pursue any ensuing solicited bid process. The local government shall not be obligated to engage such services. (Code 1981, § 36-91-112, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-113. Unsolicited proposals.

(a) If a local government adopts a rule, regulation, or ordinance affirming its participation in the process created in this article, a private entity may submit an unsolicited proposal for a project to the local government for review and determination as a qualifying project in accordance with the guidelines established by the local government. Any such unsolicited proposal shall be accompanied by the following material and information:

(1) A project description, including the location of the project, the conceptual design of such facility or facilities, and a conceptual plan for the provision of services or technology infrastructure;

(2) A feasibility statement that includes:

(A) The method by which the private entity proposes to secure any necessary property interests required for the project;

(B) A list of all permits and approvals required for the project from local, state, or federal agencies; and

(C) A list of public utility facilities, if any, that will be crossed by the project and a statement of the plans of the private entity to accommodate such crossings;

(3) A schedule for the initiation and completion of the project to include the proposed major responsibilities and timeline for activities to be performed by both the local government and private entity as well as a proposed schedule for obtaining the permits and approvals required in subparagraph (B) of paragraph (2) of this subsection;

(4) A financial plan setting forth the private entity's general plans for financing the project, including the sources of the private entity's

funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity; a description of user fees, lease payments, and other service payments over the term of the comprehensive agreement pursuant to Code Section 36-91-115; and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time;

(5) A business case statement that shall include a basic description of any direct and indirect benefits that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data;

(6) The names and addresses of the persons who may be contacted for further information concerning the unsolicited proposal; and

(7) Such additional material and information as the local government may reasonably request.

(b) For any unsolicited proposal of the development of a project received by a local government, the local government may charge and retain a reasonable fee to cover the costs of processing, reviewing, and evaluating the unsolicited proposal, including, without limitation, reasonable attorney's fees and fees for financial, technical, and other necessary advisers or consultants.

(c) The local government may reject any proposal or unsolicited proposal at any time and shall not be required to provide a reason for its denial. If the local government rejects a proposal or unsolicited proposal submitted by a private entity, it shall have no obligation to return the proposal, unsolicited proposal, or any related materials following such rejection.

(d) A private entity assumes all risk in submission of a proposal or unsolicited proposal in accordance with subsections (a) and (b) of this Code section, and a local government shall not incur any obligation to reimburse a private entity for any costs, damages, or loss of intellectual property incurred by a private entity in the creation, development, or submission of a proposal or unsolicited proposal for a qualifying project. (Code 1981, § 36-91-113, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-114. Approval process.

(a) The local government may approve the project in an unsolicited proposal submitted by a private entity pursuant to Code Section 36-91-113 as a qualifying project. Determination by the local government of a qualifying project shall not bind the local government or the private entity to proceed with the qualifying project.

(b) Upon the local government's determination of a qualifying project as provided in subsection (a) of this Code section, the local government shall:

(1) Seek competing proposals for the qualifying project by issuing a request for proposals for not less than 90 days; and

(2) Review all proposals submitted in response to the request for proposals based on the criteria established in the request for proposals.

(c) When the time for receiving proposals expires, the local government shall first rank the proposals in accordance with the factors set forth in the request for proposal or invitation for bids. The local government shall not be required to select the proposal with the lowest price offer, but it may consider price as one of various factors in evaluating the proposals received in response to the request for proposals for a qualifying project. Factors that may be considered include:

(1) The proposed cost of the qualifying project;

(2) The general reputation, industry experience, and financial capacity of the private entity;

(3) The proposed design of the qualifying project;

(4) The eligibility of the facility for accelerated selection, review, and documentation timelines under the local government's guidelines;

(5) Benefits to the public;

(6) The private entity's compliance with a minority business enterprise participation plan;

(7) The private entity's plans to employ local contractors and residents; and

(8) Other criteria that the local government deems appropriate.

(d) After ranking the proposals, the local government shall begin negotiations with the first ranked private entity. If the local government and the first ranked private entity do not reach a comprehensive agreement or interim agreement, then the local government may conduct negotiations with the next ranked private entity. This process shall continue until the local government either voluntarily abandons the process or executes a comprehensive agreement or interim agreement with a private entity.

(e) At any time during the process outlined in this Code section but before the full execution of a comprehensive agreement, the local

government may, without liability to any private entity or third party, cancel its request for proposals or reject all proposals received in response to its request for proposals, including the unsolicited proposal, for any reason whatsoever.

(f) Nothing in this article shall enlarge, diminish, or affect the authority, if any, otherwise possessed by the local government to take action that would impact the debt capacity of the State of Georgia or any local government. The credit of this state shall not be pledged or loaned to any private entity. The local government shall not loan money to the private entity in order to finance all or a portion of the qualifying project. A multiyear lease entered into by a local government which is not terminable at the end of each fiscal year during the term of the lease shall be considered a debt of the local government which enters into such lease, and such lease shall apply against the debt limitations of the local government. (Code 1981, § 36-91-114, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-115. Comprehensive agreement.

(a) The comprehensive agreement entered into between the local government and the private entity selected in accordance with this article shall include:

(1) A thorough description of the duties of each party in the completion and operation of the qualifying project;

(2) Dates and schedules for the completion of the qualifying project;

(3) Any user fees, lease payments, or service payments as may be established by agreement of the parties, as well as any process for changing such fees or payments throughout the term of the agreement, and a copy of any service contract;

(4) Any reimbursements to be paid to the local government for services provided by the local government;

(5) A process for the review of plans and specifications for the qualifying project by the local government and approval by the local government if the plans and specifications conform to reasonable standards acceptable to the local government;

(6) A process for the periodic and final inspection of the qualifying project by the local government to ensure that the private entity's activities are in accordance with the provisions of the comprehensive agreement;

(7) Delivery of performance and payment bonds in the amounts required in Code Sections 36-91-70 and 36-91-90 and in a form

acceptable to the local government for those components of the qualifying project that involve construction, and surety bonds, letters of credit, or other forms of security acceptable to the local government for other phases and components of the development of the qualifying project;

(8) Submission of a policy or policies of public liability insurance, copies of which shall be filed with the local government accompanied by proofs of coverage, or self-insurance, each in form and amount satisfactory to the local government and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;

(9) A process for monitoring the practices of the private entity by the local government to ensure that the qualifying project is properly maintained;

(10) The filing of appropriate financial statements to the local government on a periodic basis; and

(11) Provisions governing the rights and responsibilities of the local government and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity, including conditions governing assumption of the duties and responsibilities of the private entity by the local government and the transfer or purchase of property or other interests of the private entity by the local government, including provisions compliant with state constitutional limitations on public debt by the local government. Such policies and procedures shall be consistent with Code Section 36-91-116.

(b) The comprehensive agreement may include such other terms and conditions that the local government determines will serve the public purpose of this article and to which the private entity and the local government mutually agree, including, without limitation, provisions regarding unavoidable delays and provisions where the authority and duties of the private entity under this article shall cease and the qualifying project is dedicated to the local government for public use.

(c) Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

(d) The comprehensive agreement may provide for the development of phases or segments of the qualifying project. (Code 1981, § 36-91-115, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-116. Default and remedies.

(a) In the event of a material default by the private entity, the local government may terminate, with cause, the comprehensive agreement

and exercise any other rights and remedies that may be available to it at law or in equity, including, but not limited to, claims under the maintenance, performance, or payment bonds; other forms of security; or letters of credit required by Code Section 36-91-115.

(b) The local government may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title, and interest in such qualifying project subject to statutory limitations on the availability of future appropriated or otherwise unobligated funds.

(c) The power of eminent domain shall not be delegated to any private entity with respect to any project commenced or proposed pursuant to this article. Any local government having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has perfected a security interest in the qualifying project may participate in the condemnation proceedings with the standing of a property owner.

(d) In the event the local government elects to take over a qualifying project pursuant to subsection (b) of this Code section, the local government may develop the qualifying project, impose user fees, and impose and collect lease payments for the use thereof. (Code 1981, § 36-91-116, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-117. Powers.

All power or authority granted by this article to public entities shall be in addition and supplemental to, and not in substitution for, the powers conferred by any other general, special, or local law. The limitations imposed by this article shall not affect the powers conferred by any other general, special, or local law and shall apply only to the extent that a local government elects to proceed under this article. (Code 1981, § 36-91-117, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-118. Sovereign or official immunity.

Nothing in this article shall be construed as or deemed a waiver of the sovereign or official immunity of any local government or any officer or employee thereof with respect to the participation in, or approval of, all or any part of the qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. (Code 1981, § 36-91-118, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-119. Article inapplicable to local government procurement via competitive sealed bidding; article inapplicable to certain transportation projects; public meeting requirements.

(a) Local governments that proceed with procurement pursuant to competitive sealed bidding as defined in Code Section 36-91-2, or any other purchasing options available under current law, shall not be required to comply with this article.

(b) Nothing in this article shall apply to or affect the State Transportation Board, the Department of Transportation, or the State Road and Tollway Authority, or any project thereof.

(c) Nothing in this article shall abrogate the obligations of a local government or private entity to comply with the public meetings requirement in accordance with Chapter 14 of Title 50 or to disclose public information in accordance with Article 4 of Chapter 18 of Title 50. (Code 1981, § 36-91-119, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

CHAPTER 92

WAIVER OF IMMUNITY FOR MOTOR VEHICLE CLAIMS

36-92-1. Definitions.

Law reviews. — For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

JUDICIAL DECISIONS

Motor vehicle. — When a local entity purchases automobile liability insurance in an amount greater than the prescribed limits set forth for a waiver of sovereign immunity under O.C.G.A. § 36-92-1 et seq., the entity waives sovereign immunity to the extent of the entity's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the broad definition of "any motor vehicle" set forth in § 33-24-51 applies. Therefore, in a wrongful death and survivor case, a county waived sovereign immunity to the extent of the county's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the Georgia legislature did not intend to apply a narrow definition of motor vehicle under O.C.G.A. § 36-92-1 in a case involving an injury caused by a bush hog and a tractor. Gates v. Glass, 291 Ga. 350, 729 S.E.2d 361 (2012).

School district waived immunity to extent of insurance covering school bus accident. — In a parent's action against a school district for the death of the parent's child as the child tried to board a school bus, although the district had sovereign immunity, the district waived sovereign immunity to the extent of the district's purchase of liability insurance pursuant to O.C.G.A. § 33-24-51(b); the exclusion from the waiver of sovereign immunity for school districts in O.C.G.A. § 36-92-2(a) did not extend to the second

sentence of § 33-24-51(b). Tift County Sch. Dist. v. Martinez, 331 Ga. App. 423, 771 S.E.2d 117 (2015), cert. denied, No. S15C1084, 2015 Ga. LEXIS 458 (Ga. 2015).

"Local government entity" includes sheriffs' offices. — Term "local government entity" should not be construed so narrowly as to exclude sheriffs' offices, which though separate from a county itself, nevertheless, clearly performs governmental services on a local level. Davis v. Morrison, 344 Ga. App. 527, 810 S.E.2d 649 (2018).

Summary judgment was properly granted to the deputy as the deputy was not subject to liability for the automobile accident and the plaintiff's claims against the deputy were barred because the term "local government entity" included sheriffs' offices; any local government officer or employee who committed a tort involving the use of a covered motor vehicle while in the performance of the employee's official duties was not subject to lawsuit or liability; and the deputy was employed as a county sheriff's deputy and the deputy was driving a county-owned vehicle en route to the sheriff's office's evidence room where the deputy worked as an evidence custodian when the accident with the plaintiff occurred. Davis v. Morrison, 344 Ga. App. 527, 810 S.E.2d 649 (2018).

Cited in City of Atlanta v. Mitcham, 296 Ga. 576, 769 S.E.2d 320 (2015).

36-92-2. Maximum waiver amount; exceptions; liability; recovery of interest.

JUDICIAL DECISIONS

Sovereign immunity not waived.

Bus driver failed to show that the waiver of sovereign immunity under O.C.G.A. § 36-92-2(a) for the negligent use of motor vehicles applied to the driver's claims for wrongful discharge, false arrest, and malicious prosecution because the school district's alleged liability for those claims was not predicated upon the school district's negligent use of a motor vehicle. Bomia v. Ben Hill County Sch. Dist., 320 Ga. App. 423, 740 S.E.2d 185 (2013).

Waiver of immunity. — When a local entity purchases automobile liability insurance in an amount greater than the prescribed limits set forth for a waiver of sovereign immunity under O.C.G.A. § 36-92-1 et seq., the entity waives sovereign immunity to the extent of the entity's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the broad definition of "any motor vehicle" set forth in § 33-24-51 applies. Therefore, in a wrongful death and survivor case, a county waived sovereign immunity to the extent of the county's insurance coverage as required by § 33-24-51(b), and the Georgia legislature did not intend to apply a narrow definition of motor vehicle under O.C.G.A. § 36-92-1 in a case involving an injury caused by a bush hog and a tractor. Gates v. Glass, 291 Ga. 350, 729 S.E.2d 361 (2012).

School district waived immunity to extent of insurance covering school bus accident. — In a parent's action against a school district for the death of the parent's child as the child tried to board a school bus, although the district had sovereign immunity, the district waived sovereign immunity to the extent of the district's purchase of liability insurance pursuant to O.C.G.A. § 33-24-51(b); the exclusion from the waiver of sovereign immunity for school districts in O.C.G.A. § 36-92-2(a) did not extend to the second sentence of § 33-24-51(b). Tift County Sch. Dist. v. Martinez, 331 Ga. App. 423, 771 S.E.2d 117 (2015), cert. denied, No. S15C1084, 2015 Ga. LEXIS 458 (Ga. 2015).

Injured driver could establish extent of damages caused by collision. — Driver's employer's uninsured motorist (UM) coverage was available to the driver because the policy promised to pay sums the driver was "legally entitled to recover" from a UM, even though the driver had collided with a county vehicle and the county's partial sovereign immunity prevented the driver from establishing in a

lawsuit that the driver was legally entitled to recover the full amount of the driver's damages from the county. FCCI Ins. Co. v. McLendon Enters., 297 Ga. 136, 772 S.E.2d 651 (2015).

Cited in Primas v. City of Milledgeville, 296 Ga. 584, 769 S.E.2d 326 (2015).

36-92-3. No employee liability; parties to litigation; evidence; bar to further recovery.

JUDICIAL DECISIONS

Claim against police officer barred. Trial court properly concluded that O.C.G.A. § 36-92-3 barred the driver and the driver's wife from recovering against the officer in the officer's official capacity and, thus, properly dismissed the officer from the case. Ray v. City of Griffin, 318 Ga. App. 426, 736 S.E.2d 110 (2012).

Claim against sheriff's deputy barred. — Summary judgment was properly granted to the deputy as the deputy was not subject to liability for the automobile accident, and the plaintiff's claims against the deputy were barred because the term "local government entity" included sheriffs' offices; any local government officer or employee who committed a tort involving the use of a covered motor vehicle while in the performance of the employee's official duties was not subject to lawsuit or liability; and the deputy was employed as a county sheriff's deputy and the deputy was driving a county-owned vehicle en route to the sheriff's office's evidence room where the deputy worked as an evidence custodian when the accident with the plaintiff occurred. Davis v. Morrison, 344 Ga. App. 527, 810 S.E.2d 649 (2018).

Employee acting within scope of employment. — Driver's argument that a city employee was acting outside the scope of employment at the time of an accident was without merit because the employee's act of crossing a private shopping center before pulling onto the road was not unlawful under O.C.G.A. § 40-6-20(e) (disregard of a traffic signal) or O.C.G.A. § 16-7-21(b)(1) (criminal trespass); the employee was therefore immune from suit and liability based on O.C.G.A. § 36-92-3. Guice v. Brown, 334 Ga. App. 199, 778 S.E.2d 823 (2015).

Cited in Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014).

FURMAN SMITH LAW LIBRARY
3 5201 01123 2066